

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JAYLA ALLEN, ET AL ) NO. 4-18-CV-3985  
)  
)  
VS. ) Houston, Texas  
) 10:00 a.m.  
)  
JOSHUA MUHAMMAD, ET AL ) June 5, 2020

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HEARING

BEFORE THE HONORABLE CHARLES ESKRIDGE

UNITED STATES DISTRICT JUDGE

VOLUME 1 OF 1

(HEARING VIA ZOOM)

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10:02:47

## P R O C E E D I N G S

June 5, 2020

(HEARING VIA ZOOM CONFERENCE.)

\* \* \* \* \*

10:00:56

THE COURT: Okay. And are we ready to proceed?

And do we have the court reporter on and able to hear everything.

THE COURT REPORTER: Yes, Judge. This is Kathy Miller.

10:01:09

THE COURT: Okay. Great. Hi. Welcome. I see you now.

The Court calls 18-3985, Jayla Allen, et al vs. Waller County, Texas, et al.

10:01:19

I see that there are a number of participants on the screen. We are proceeding by a Zoom video conference for this hearing.

10:01:42

Can I get appearances for counsel for the parties, and as you do so, can I get an indication who is going to be arguing for each side today? Starting with plaintiffs, please.

MS. ADEN: Good morning, Your Honor. I am Leah Aden, counsel for plaintiffs. I will be speaking today.

I am going to turn to my other co-counsel, who are joining by audio, but will not be speaking.

10:01:55

THE COURT: Thank you. And would you like

1 their appearances on the record?

2 MS. ADEN: I would prefer so, yes, if they  
3 don't mind.

4 THE COURT: I think so. And, well, we will see  
10:02:04 5 if we can -- sometimes we end up speaking over each other,  
6 and it is hard to do it on video. We will see how that  
7 goes but, if not, will you, please, make sure that  
8 everybody's appearance has been stated so that the court  
9 reporter got it?

10:02:16 10 MS. ADEN: I will do that. I also don't mind  
11 e-mailing it through Ms. Gonzalez, or I can get -- I didn't  
12 get Kathy's last name. I would love to appropriately  
13 address her, but we could also e-mail her to make it easy.

14 THE COURT: Okay. Thank you. The case  
10:02:30 15 manager, Jenelle Gonzalez, would be great. Thank you.

16 Can other counsel state your appearance,  
17 please?

18 MR. SEAQUIST: Good morning, Your Honor. This  
19 is Gunnar Seaquist, and I am joined nearly six feet apart  
10:02:40 20 by my partner Bob Heath, and we are here today on behalf of  
21 the Defendants.

22 Also listening in on the call today are  
23 Christy Eason, the election administrator for Waller  
24 County. She is named as a defendant in her official  
10:02:52 25 capacity, as well as Liz Dorsey, who is with the District

1 Attorney's office for Waller County. And they will just be  
2 appearing -- or, excuse me, they will just be observing. I  
3 will be doing the arguing.

4 THE COURT: Okay. Thank you.

10:03:09

5 Ms. Aden, I think you wanted to have --  
6 did you want to have your counsel state their appearance or  
7 let us know on the record at this point? Up to you.

10:03:22

8 MS. ADEN: Why don't I spare them and I will  
9 try to get everyone; and if I missed anyone, we will  
10 confirm also by e-mail.

11 THE COURT: Okay.

10:03:37

12 MS. ADEN: So I have on audio, but not video,  
13 are my co-counsel, John Cusick, C-U-S-I-C-K; and Steven  
14 Lance, also with plaintiffs and the legal defense fund; my  
15 co-counsel, Julie Harrison, Nicole Lynn, and Tyler Ames.

16 And appearing as plaintiffs are Joshua  
17 Muhammad on behalf of the Panther party, and Treasure  
18 Smith, as an individual plaintiff.

10:04:02

19 THE COURT: Thank you very much. Thank you  
20 everyone for attending today.

10:04:22

21 It is defendants' motion, so I think  
22 obviously defendant will go first. I have a couple of  
23 questions at the outset, just on sort of the state of play  
24 for this litigation, and what it might mean for the 2020  
25 election that's coming up that's kind of separate than, you

1 know, substantively, what we are going to be talking about  
2 today.

3 But I wonder, have the parties been  
4 attempting to -- I don't know if it's a settlement, or an  
10:04:39 5 accommodation, or something by compromising decision that  
6 would be applicable to the 2020 election?

7 Have there been discussions in that  
8 regard? And to the extent that there's not, I know that  
9 this action addresses allegations about 2018.

10:05:03 10 I am wondering, I haven't really seen  
11 anything, and there haven't been -- hasn't been much put to  
12 me by way of emergency motion or anything for a need for  
13 resolution before 2020, so I am wondering what the parties'  
14 expectations are in that regard.

10:05:18 15 And, Ms. Aden, on that, it might make  
16 sense for, perhaps, you to start and have the Defendants  
17 respond.

18 MS. ADEN: Yes. So there have been some  
19 high-level attempts at discussing how we might resolve this  
10:05:32 20 case, but they have not been fruitful.

21 As of today, plaintiffs remain completely  
22 open to continuing to discuss those, but the relief that we  
23 seek has not, for the most part, materially changed, which  
24 is two major things: Equitable access to early voting  
10:05:51 25 opportunities for plaintiffs, and people similarly

1 situated, who are some of the highest users of early voting  
2 in Waller County, who are the -- who live in a precinct  
3 with the highest number of registered voters.

4                   So we are continuing to assert that they  
10:06:07 5 are entitled to substantially more early voting; and  
6 moreover, they are entitled to a voice in the process for  
7 setting early voting.

8                   We are not asking this Court to  
9 micromanage how Waller County conducts its early voting,  
10:06:20 10 but we are certainly aware that there are flaws in the  
11 process, and there are certainly flaws in the outcome, and  
12 we think that that occurred in 2018, which is why we seek a  
13 declaratory judgment that in and of itself has a  
14 prophylactic value. It tells the county they have done  
10:06:38 15 something wrong, and you should not do that again.

16                   You know, there are -- we would like an  
17 order that Prairie View students and other members of the  
18 Prairie View community are affirmatively part of the  
19 process.

10:06:51 20                   It should be noted that the harm continues  
21 because in 2019 there was no early voting on the campus of  
22 the Memorial Student Center, despite the demand for it, and  
23 there similarly was no early voting in 2020.

24                   So, Your Honor's correct that we have not  
10:07:07 25 sought emergency relief. I think the parties are very

1 interested in which claims remain alive and well and worthy  
2 of airing at a trial because there is a lot of dispute, but  
3 we are certainly, I think, from plaintiffs' perspective,  
4 under the assumption that for the claims that survive  
5 hopefully from today's hearing, it -- it encourages the  
6 county to take seriously plaintiffs' claims in terms of  
7 setting the schedule.

10:07:28

8 And if I may, I know I have gone on, I  
9 want to say two more things in light of the current  
10 situation that we are in. We are in a pandemic. Right now  
11 our clients and others are not on campus, but there is an  
12 expectation that they will return to campus in the fall.

10:07:39

13 It is, therefore, very imperative that  
14 they have access to equitable early voting because students  
15 who are appearing on campus in the fall, they can't take  
16 advantage under Texas law of being out of the county on  
17 election day. They can't take advantage, necessarily,  
18 given the litigation, of having a disability based on fear  
19 of voting in person. That as of today is not enough.

10:07:57

20 And so early voting will be very important  
21 in terms of providing ample opportunity for plaintiffs to  
22 be able to vote, to vote with social distancing, to vote in  
23 a safe -- a safe manner.

10:08:14

24 And my final point is that absentee voting  
25 will also not be an option for plaintiffs because, again,

10:08:31



10:08:47

1 they will be in county. But moreover, the record reflects,  
2 and it's disputed that there has been a lot of issue with  
3 access to mail, and access to the ability to update voter  
4 registration, and forcing plaintiffs and others like them  
5 to have to engage in a process of voting by mail will raise  
6 a whole host of issues that will harm them in a whole other  
7 way.

10:09:03

8                   So having access to ample early voting  
9 that is on par with the fact that they are a significant  
10 voting block in the county is a live issue. It is a  
11 disputed issue. And, frankly, it's one that has not been  
12 resolved, but that is why we are continuing and forcing  
13 this litigation to move forward because of the facts that  
14 are at hand.

10:09:16

15                   THE COURT: Thank you. And like all good and  
16 able counsel, you have succinctly argued your entire case  
17 in response to one question, but I appreciate that. It is  
18 a good overview, and it helps me to understand how the  
19 table is set at this moment.

10:09:29

20                   I hadn't even thought about the  
21 implications of COVID-19 on what might be happening at  
22 November. So I'll be thinking about that.

10:09:46

23                   Mr. Seaquist, can you give me -- I think  
24 that you're speaking lead for Defendants -- do you -- a  
25 response, generally to that? Although, at this point

1 everybody is going to have plenty of time to speak. I  
2 guarantee you that.

3 Right now I was mostly trying to  
4 understand what the potential for accommodation, or  
10:09:58 5 resolution of this is, and then what might be needed on  
6 what time frame before the November 2020 election, if  
7 anything. So can I have the Defendants' position?

8 MR. SEAQUIST: Absolutely, Your Honor. First,  
9 may I have the Court's permission -- I am in a table. I  
10:10:14 10 could stand to address the Court. But may I have  
11 permission to remain seated because I got a microphone on  
12 here that might makes things a little challenging?

13 THE COURT: Absolutely. And I am also not in a  
14 robe, so we are a little more informal today.

10:10:27 15 MR. SEAQUIST: Okay.

16 THE COURT: So, please, proceed.

17 MR. SEAQUIST: Thank you for that, Your Honor.

18 Your Honor, as you saw in our motion in  
19 reply, one of the things that weighs very heavily on the  
10:10:36 20 question that you have posed is the recent statute, the  
21 adoption of House Bill 1888, which sets a standardized  
22 requirement for early voting hours.

23 So what we have seen since the adoption of  
24 that bill is although -- you know, we -- the county had  
10:10:52 25 provided ample early voting in Prairie View even before the

1 adoption of that bill. Since that time the county is  
2 required to have every early voting location -- temporary  
3 branch voting location, have the same hours as the main  
4 voting location, and so early voting takes place for the  
5 full two weeks at each location.

10:11:10

6 How the county --

7 THE COURT: Can I pause you there for just a  
8 second? Maybe that's something that I didn't pick up on in  
9 reading the statute.

10:11:19

10 Is it kind of like a most favored nations  
11 clause that whatever the main early voting location is,  
12 that's going to be the number of hours set at all early  
13 voting locations?

14 MR. SEAQUIST: That is correct, Your Honor,  
15 with the exception of weekends.

10:11:32

16 The temporary branch polling locations are  
17 required to be open every day that the main early voting --  
18 every weekday that the main early voting location is  
19 required to be open.

10:11:47

20 THE COURT: Okay.

21 MR. SEAQUIST: And, of course, another  
22 provision of the election code requires the main early  
23 voting branch be open each day of early voting.

24 THE COURT: Okay. We don't need to go into  
25 further detail on that. And, obviously, I'll want the

10:11:56

1 Plaintiffs' position on that question, eventually.

2 But, please, go on as to other  
3 accommodation issues, and what is necessary for 2020.

4 MR. SEAQUIST: Yes, Your Honor. So as a result  
10:12:12 5 of that statute, the county has, in fact, opened up the  
6 temporary branch locations for the full two weeks of early  
7 voting.

8 The -- because there is so much more time  
9 at each location, they have had to reduce the number of  
10:12:28 10 locations down to one for -- per commissioners court  
11 precinct, including one in Prairie View at the Waller  
12 County Community Center, which is -- and we will be talking  
13 about today -- on the footprint of the Prairie View A&M  
14 campus, approximately .28 miles as the crow flies from the  
10:12:46 15 student center, maybe close to .35 if you end up walking  
16 it, due to some turns.

17 One thing the evidence in this case will  
18 show, that even at the time of the events at issue in this  
19 lawsuit, there was a sidewalk directly from a parking lot  
10:13:00 20 on campus by the football stadium that goes to the post  
21 office next door where students could walk to the post  
22 office and then across to the community center.

23 Since that time, as a further means of  
24 assisting students in voting, the county has worked with  
10:13:13 25 Prairie View A&M to actually construct a sidewalk that goes

1 directly to the community center.

2                   So, there will be early voting, or there  
3 has been in 2019, and in the primary of this year, early  
4 voting -- for the full early voting period at the community  
10:13:30 5 center which is accessible and very proximate to Prairie  
6 View A&M.

7                   There has not been, obviously, the time to  
8 adopt hours for the November election -- or, excuse me, to  
9 adopt locations for the November election has not yet come  
10:13:43 10 up yet. That will, as it always is, be a deliberative  
11 process; but my suspicion is, or the indications are that  
12 that will be the same format that will be used at that time  
13 as well.

14                   THE COURT: Okay. Thank you very much.

10:13:57 15                   All right. That gives me some -- some  
16 good background here to start, and I am ready to take up  
17 the motions -- the motion now.

18                   Defendant would like to start.

19                   Is there anything that the parties needed  
10:14:13 20 or discussed bringing to my attention before we started  
21 with the argument itself? Anything else as an initial  
22 matter?

23                   MR. SEAQUIST: Not from Defendants, Your Honor.

24                   MS. ADEN: Not from Plaintiffs at this time.

10:14:26 25                   THE COURT: Okay. Thank you. Mr. Seaquist,

1 will you proceed, then, please?

2 MR. SEAQUIST: Thank you, Your Honor. May it  
3 please the Court and opposing counsel.

4 The Defendants are here today seeking  
10:14:35 5 summary judgment on all claims because, in short, this is a  
6 voter abridgement case for which there is no evidence of an  
7 abridgement, and it is an intentional discrimination case  
8 for which there is no evidence of intentional  
9 discrimination.

10:14:48 10 Important to this motion as a summary  
11 judgment motion, the underlying material facts are not in  
12 dispute between the parties. We are generally agreed on  
13 what took place. The questions are really a legal  
14 application to those facts.

10:15:01 15 The pertinent facts, if I may just briefly  
16 recite them, are for the 2018 general election, the Waller  
17 County Commissioners Court, which is the governing body of  
18 the county which is charged with setting election schedules  
19 under the election -- Texas Elections Code, adopted an  
10:15:19 20 early voting schedule that was based on a proposal and  
21 agreed to by the party chairs of the Democratic and  
22 Republican parties of Waller County. Those are the two  
23 active political parties in Waller County.

24 The early voting schedule was adopted at  
10:15:36 25 open meetings. They were duly noticed in accordance with

1 the Texas Open Meetings Act, and any resident of Waller  
2 County was free to appear, provide input, or opposition to  
3 what was being proposed. At the time that the -- the  
4 locations and schedules were chosen, however, no one did  
5 appear and voice any opposition.

10:15:52

6 The timing of Waller County's adoption of  
7 the early voting schedule in 2018, the locations were  
8 chosen at a meeting on August 22nd. There was some new  
9 machines in the county, so there were some ongoing training  
10 of poll workers.

10:16:11

11 And to wait for that to play out, the  
12 locations -- excuse me, the hours were actually chosen two  
13 weeks later on September 4th, again, in a public meeting.  
14 But the timing of those events is actually consistent with  
15 guidance and recommendations issued by the Texas Secretary  
16 of State's office.

10:16:24

17 They recommend that counties begin  
18 adopting their early voting locations as well as schedule  
19 on -- at least in 2018, the date was August 20th of 2018,  
20 and that is consistent with when the county began their  
21 process.

10:16:41

22 It is important to note in this case, Your  
23 Honor, that the schedule adopted by the county, and this is  
24 not disputed, did not reduce or eliminate early voting in  
25 Prairie View from any -- or from the prior election. What

10:16:58

1 it did, in fact, is expand and add additional hours of  
2 early voting in Prairie View.

3 THE COURT: Let me ask a question on that. One  
4 thing I have wondered, is there a chart that has been  
10:17:15 5 submitted to me that indicates what the early voting hours  
6 were in the prior election, which I understand was 2016?

7 And then also, I am looking at page 12 of  
8 the amended complaint which was the early voting location  
9 hours, I think, as adopted, but then I understand that some  
10:17:39 10 hours were added afterwards, I mean, as the election  
11 approached.

12 And is there -- I would like to understand  
13 actually what -- on -- during early voting, what the facts  
14 were, on what days that occurred at each location, you  
10:17:58 15 know, which weeks, et cetera.

16 MR. SEAQUIST: Yes, Your Honor.

17 THE COURT: Has that been summarized for me  
18 somewhere? It would be very helpful.

19 MR. SEAQUIST: Your Honor, there is not a  
10:18:07 20 specific chart as it relates to 2016. Since we were agreed  
21 and, in fact, Plaintiffs' expert, Dr. Robert Stein, you  
22 know, admitted there was no reduction and, in fact, there  
23 was an extension, we didn't feel the need to burden the  
24 record with additional documentation on that.

10:18:23 25 It just didn't seem like a -- it seemed



1 like an agreed issue that we didn't produce additional  
2 evidence on.

3 But as it relates to the schedule that  
4 you're looking at in the amended complaint, that is the  
10:18:35 5 initial schedule that was adopted, the locations on August  
6 22nd of 2018, and the times on September 4th of 2018.

7 That schedule, standing alone, was in  
8 itself an expansion.

9 THE COURT: Okay.

10:18:51 10 MR. SEAQUIST: After this litigation started,  
11 there was --

12 THE COURT: And when you say an expansion, is  
13 that -- are you talking about an expansion at the Memorial  
14 Student Center? Is that what you're referring to?

10:19:03 15 MR. SEAQUIST: I am -- it is an expansion in  
16 Prairie View generally, Your Honor. The -- it was probably  
17 about the same at the Memorial Student Center.

18 THE COURT: Okay. So it is as to the Memorial  
19 Student Center and to the WC Community Center?

10:19:19 20 MR. SEAQUIST: Correct, Your Honor.

21 THE COURT: Okay. All right. And then go  
22 ahead. But what was added to those hours that is not  
23 reflected on this chart?

24 MR. SEAQUIST: What was added was the  
10:19:28 25 Memorial -- the hours at the Memorial Student Center were

1 extended. They were initially 9:00 to 5:00, I believe, as  
2 reflected on the chart.

3 THE COURT: It says 8:00 to 5:00.

4 MR. SEAQUIST: Okay. Then that is correct,  
10:19:38 5 Your Honor. They were initially 8:00 to 5:00. They were  
6 extended on each day at the Memorial Student Center from --  
7 excuse me -- from 7:00 to 7:00.

8 THE COURT: Okay.

9 MR. SEAQUIST: The full 12-hour days, which is  
10:19:51 10 the maximum voting under the Texas Election Code.

11 THE COURT: Okay.

12 MR. SEAQUIST: And then the Memorial Student  
13 Center -- or, excuse me, the Waller Community Center hours  
14 were not changed, but there was an additional addition of  
10:20:05 15 hours, which was there were five hours added on Sunday at  
16 the Prairie View City Hall, so there was actually --

17 THE COURT: So a new location, Prairie View  
18 City Hall?

19 MR. SEAQUIST: It was new for this election,  
10:20:18 20 Your Honor. It had been used as a polling location at  
21 times in previous elections.

22 THE COURT: And what day was that?

23 MR. SEAQUIST: That would have been Sunday, in  
24 the middle of the early voting period.

10:20:28 25 THE COURT: Okay. So between week one and two?

1 MR. SEAQUIST: Correct, Your Honor.

2 THE COURT: And what times?

3 MR. SEAQUIST: It was, I believe, 12:00 to  
4 5:00.

10:20:42 5 THE COURT: Just for that one day. Okay.

6 Thank you.

7 MR. SEAQUIST: Yes, Your Honor.

8 THE COURT: Okay. Proceed. Thank you.

9 MR. SEAQUIST: All right. What the county's  
10:20:54 10 schedule did, both as it was initially adopted, and in the  
11 expanded form, was create three full-time polling locations  
12 that are geographically located to serve the entirety of  
13 the county. One is at this -- the county courthouse in  
14 Hempstead. And, again, under the election code, that is  
10:21:15 15 designated as the main early voting place. So the days and  
16 hours of that are set by statute.

17 But the other two full-time locations were  
18 in the city of Waller, which is on the northern end of  
19 Waller County; and in the city of Brookshire, which is on  
10:21:30 20 the far southern end of Waller County.

21 And so that basically covered both the  
22 northern and southern parts of the county. And if you --  
23 there are some maps of Waller County in our exhibits. It  
24 is kind of a long, narrow county, vertically.

10:21:48 25 THE COURT: I have got that and have some

1 questions about it. Go ahead.

2 MR. SEAQUIST: Okay. Of those, Your Honor,  
3 two, Hempstead and the city of Brookshire, as alleged in  
4 the complaint, have majority African American CVAP, and the  
10:22:07 5 city of Waller has a majority Anglo American CVAP. Each of  
6 those three locations, or those areas, have higher numbers  
7 of early votes than did the Prairie View area in the 2016  
8 election.

9 In addition, the county also allocated the  
10:22:25 10 shorter windows of early voting to disperse early voting to  
11 some of the other more rural areas of the county. Those  
12 included in the city of Prairie View, Monaville, Fields  
13 Store.

14 One thing I want to make clear for the  
10:22:39 15 record, in the Plaintiffs' complaint they treat Fields  
16 Store as being a part of Waller and they allege that  
17 Waller, the city of Waller, had two locations. That is  
18 factually incorrect, and the Court can take judicial notice  
19 simply of the map.

10:22:52 20 Fields Store is an area that is nine miles  
21 northeast of Waller, effectively. It is not part of the  
22 city of Waller. And, in fact, Fields Store is further away  
23 from the city of Waller than Prairie View is from the city  
24 of Waller. So I just want to be clear on that point.

10:23:10 25 THE COURT: Actually, let me go through this

1 just real quick because it is not in -- on the map it  
2 indicates the precincts. It doesn't indicate -- or at  
3 least it is hard to read what the particular cities are, so  
4 let me just ask.

10:23:23

5 The early voting location that's in  
6 Precinct 206, which is that?

7 MR. SEAQUIST: That, Your Honor, would be the  
8 city of Waller.

9 THE COURT: That is Waller. And that's --

10:23:35

10 MR. SEAQUIST: Judge, I apologize, can I get  
11 the map out before I start --

12 THE COURT: Yeah, please do.

13 MR. SEAQUIST: -- shooting from the hip?

14 THE COURT: It is Exhibit A to your Exhibit 11,  
15 I think.

10:23:57

16 MR. SEAQUIST: Okay. I am glad I looked. Your  
17 Honor, Exhibit 20 -- or the precinct in 206 is Fields  
18 Store.

19 THE COURT: That is Fields Store. I am going  
20 to write -- hold on one second. There is eight of them,  
21 and I want to write these down. Fields Store. And then is  
22 the one -- it's at the junction of 101, 102 and 103, is it  
23 actually in 102?

10:24:09

24 MR. SEAQUIST: I believe -- I think that's  
25 right, Your Honor, based on this map.

10:24:26

1 THE COURT: And which one is that?

2 MR. SEAQUIST: That is the city of Hempstead.  
3 That is the county courthouse.

4 THE COURT: That is Hempstead. Okay.

10:24:36 5 309 is Prairie View A&M Memorial Student  
6 Center; is that correct?

7 MR. SEAQUIST: It would mark both the Memorial  
8 Student Center as well as the Waller Community Center.

9 THE COURT: What is 310?

10:24:53 10 MR. SEAQUIST: 310 is the Prairie View City  
11 Hall where the Sunday voting was at.

12 THE COURT: Okay. And 208?

13 MR. SEAQUIST: That is the city of Waller, Your  
14 Honor.

10:25:08 15 THE COURT: That's Waller. Okay. And then  
16 311?

17 MR. SEAQUIST: That is Monaville.

18 THE COURT: And I believe it's 420.

19 MR. SEAQUIST: That is Katy. And it serves 419  
10:25:28 20 and 420, but that is Katy.

21 THE COURT: Right. And then I think it's in  
22 417, is the last one.

23 MR. SEAQUIST: And, Your Honor, that's the city  
24 of Brookshire.

10:25:37 25 THE COURT: That is Brookshire.

1 MR. SEAQUIST: That is the Waller County  
2 Library in Brookshire.

3 THE COURT: All right. Thank you. That's very  
4 helpful.

10:25:48 5 And you can continue, please.

6 MR. SEAQUIST: Thank you, Your Honor.  
7 Although, you'll -- Fields Store and Katy are both Anglo  
8 majority and have higher greater -- have greater numbers of  
9 early voters in the 2016 elections, Prairie View actually  
10:26:03 10 out of those, out of the smaller, or the blocks of early  
11 voting, received the greatest number of early voting hours.

12 Each of the -- those smaller locations got  
13 early voting hours only during one week, not both. So  
14 there's a complaint in this case that Prairie View didn't  
10:26:25 15 get early voting both weeks. That is also true of Fields  
16 Store, Katy, and Monaville.

17 THE COURT: Okay.

18 MR. SEAQUIST: So under both these plans, the  
19 initial plan and the amended plan, Your Honor, the students  
10:26:39 20 in Prairie View or voters in Prairie View, have the option  
21 to vote at the -- nearby in Waller, which is approximately  
22 five and a half miles from Prairie View, or at the  
23 courthouse in Hempstead, which is seven miles,  
24 approximately, six and a half to seven miles, at any time  
10:26:57 25 during the early voting period.

1 And given the fact that Waller is a rural  
2 vote -- excuse me, a rural county, there is not any  
3 evidence in this record that that distance itself is  
4 significantly different from the distance traveled by other  
10:27:13 5 voters in the county.

6 But for those Prairie View students who  
7 did not have a car, or did not want to travel to one of  
8 those other locations, they were able to vote at the  
9 Prairie View Student Center which, as the Plaintiffs  
10:27:27 10 allege, and I don't think anyone disputes in this case, is  
11 a focal location for the daily activities of the students,  
12 or at that Waller County Community Center which, again, as  
13 the crow flies, Your Honor, is approximately .28 miles from  
14 the student center; and if you walk it, it's a little more  
10:27:47 15 than that, maybe .35. In either event it is approximately,  
16 you know, four to five city blocks.

17 THE COURT: So from the Memorial Student Center  
18 to the Waller County Community Center to Prairie View is  
19 how far?

10:28:01 20 MR. SEAQUIST: If you just draw a line on a  
21 satellite map, it comes out to about .28 miles. That is an  
22 exhibit to Dr. Stein's deposition in the summary judgment  
23 record.

24 THE COURT: Okay.

10:28:19 25 MR. SEAQUIST: I believe it's around -- just



1 under 1500 feet, as the crow flies. And then if you walk  
2 through the parking lot to get down to where -- to where it  
3 is, that adds a little bit because you have to navigate  
4 some sidewalks and things like that. So it takes it up to  
5 about .35.

10:28:34

6 THE COURT: And that is -- and just to be  
7 clear, that's from the student center itself, as opposed to  
8 the closest edge of the campus to the community center?

9 MR. SEAQUIST: That's correct, Your Honor. I  
10 mean, the community center literally sits on the edge of  
11 campus. So --

10:28:48

12 THE COURT: Okay.

13 MR. SEAQUIST: There is -- there would be no  
14 distance from the edge of campus to the community center.  
15 That is from the student center itself.

10:28:58

16 THE COURT: Okay. Thank you.

17 MR. SEAQUIST: And I want to make clear for the  
18 record, and this is contained in the deposition testimony  
19 of Judge Duhon, which is an exhibit in our motion for  
20 summary judgment, it is also -- I discussed it with  
21 Mr. Muhammad, whose deposition is in the record.

10:29:14

22 The Plaintiffs state that there wasn't a  
23 sidewalk to the community center. At the time of these  
24 events, that was technically accurate; however, there was a  
25 sidewalk that went to the post office, which is right next

10:29:29

1 door to the community center, so you could walk that  
2 sidewalk to the post office and then walk across either --  
3 it's the small median, or just in front of the street, over  
4 to the community center. So it was accessible by walking.

10:29:48

5 There was also a Prairie View shuttle  
6 bus -- this is something I discussed with Mr. Muhammad --  
7 that dropped off in the parking lot that lead to that  
8 sidewalk to the post office, so that you -- it didn't go  
9 all the way to the community center, but you could take the  
10 shuttle over to where the parking lot is to walk over there  
11 and significantly shorten the distance.

10:30:02

12 But, again, if the Court is looking at any  
13 -- prospectively, since that time, the county has even gone  
14 further by working with Prairie View A&M to install a  
15 sidewalk that goes directly to the community center.

10:30:18

16 THE COURT: Okay.

17 MR. SEAQUIST: Another thing to note, Your  
18 Honor, and, again, undisputed, to ensure easy and  
19 convenient voting, the county also installed two

10:30:32

20 controllers at the voting locations in Prairie View, both  
21 at the student center; and then when voting moved to the  
22 community center, there as well.

23 What that does -- there are controllers  
24 which then operate the voting machines. So effectively by  
25 putting two controllers, what you do is you double the

10:30:48

1 number of voting machines that you have, but you also allow  
2 for two lines of voting. And so, effectively, what those  
3 polling locations were serving as in terms of capacity was  
4 two polling locations in one because they could accommodate  
5 twice the traffic in voting as any other voting location in  
6 the county.

7 THE COURT: Now, let me ask you a question on  
8 that, and I want counsel for plaintiff also to respond to  
9 this eventually.

10 As to the hours that early voting was open  
11 at the Memorial Student Center, and at the W -- the Waller  
12 County Community Center, at the close of those hours each  
13 day, was there ever a line such that voters that were in  
14 line to early vote that day were not allowed to vote?

15 MR. SEAQUIST: Your Honor, there is no evidence  
16 that that is the case. I am not aware that that was ever  
17 the case and that's certainly not in the record. The  
18 evidence in the record actually suggests that the wait time  
19 that -- that students were experiencing was on the order of  
20 five to ten minutes.

21 THE COURT: Okay. Thank you.

22 Ms. Aden, actually can you -- do you have  
23 that handy right now? Can you respond? I am concerned  
24 if -- I know the allegation here is, generally speaking,  
25 there weren't enough early voting hours, and it should have

1 been spread over a different amount of time.

2 And I know it's a different question than  
3 -- you know, you are presenting it as a different question  
4 than what specifically happened during those 12 weeks where  
5 early voting was allowed.

10:32:26

6 But is there any evidence that there was a  
7 line such that someone was waiting to vote, but then was  
8 denied the ability to vote?

9 MS. ADEN: In short, no, Your Honor. But as  
10 you well know, voting rights does not require that people  
11 are denied outright their right to vote. Do they have to  
12 jump over extra hurdles? Do they have to do something  
13 different to vote? That is constitutionally suspect.

10:32:40

14 And I just want to correct, it is not  
15 simply -- and I'll get to this -- about the hours. It is  
16 about these are the very -- some of the highest users of  
17 early voters, highest registered group of voters, and when  
18 you get to the heart of it, you look at the schedule and it  
19 doesn't make sense.

10:32:55

20 Who has been demanding early voting? Who  
21 has been demanding it at a particular site? And then if  
22 you look at this schedule, even with the modifications that  
23 came only after we filed this lawsuit, this still just  
24 simply doesn't make sense and I'll, I'm sure, lead to it --

10:33:07

25 THE COURT: Okay.

10:33:19

1 MS. ADEN: -- when it gets to be my time --

2 THE COURT: Thank you.

3 MS. ADEN: -- but these are not as articulated  
4 by Defendants, in short.

10:33:28 5 THE COURT: Thank you very much.

6 MR. SEAQUIST: So I heard the answer to the  
7 Court's question to be "no."

8 THE COURT: Okay.

9 MR. SEAQUIST: No evidence of any lines that  
10:33:35 10 would have burdened the ability of students to -- to be in  
11 line and cast a ballot, or to be denied the ability, or  
12 even to have to wait an inordinately long time to cast a  
13 ballot.

14 Rather, the evidence is -- and when I say  
10:33:50 15 the evidence, I mean there are tweets from the Panther  
16 party, who is a plaintiff in this case, kind of going out  
17 to the student body saying, Come vote, it's only five  
18 minutes; Come vote, it is only five minutes.

19 I asked each of the Plaintiffs about their  
10:34:01 20 experience voting and each of them said, five to ten  
21 minutes.

22 So that's the evidence we have. We don't  
23 have any evidence to suggest -- there are no complaints.  
24 There is not even an allegation, frankly, that there was  
10:34:13 25 any difficulty in voting beyond that.

1 THE COURT: Okay.

2 MR. SEAQUIST: Therefore, Your Honor, under  
3 both the initial and the extended plans, Prairie View  
4 students had not only the full two-week period where they  
10:34:29 5 could avail themselves of the ability to cast an early  
6 ballot in either Waller, Hempstead, or one of the other  
7 locations, but they also had the added option of five days  
8 of early voting either on campus, or on the very edge of  
9 it.

10:34:42 10 And, in fact, under that extended plan  
11 where the county added additional hours, the hours given to  
12 Prairie View, Prairie View had more early morning and  
13 evening hours than any other location. So even when, for  
14 example, in Waller or Hempstead polls closed at 5:00, at  
10:34:59 15 Prairie View they had additional evening hours, which for  
16 students may be significant because it gives them some time  
17 after school to go and cast their ballot. Makes it more  
18 convenient that way.

19 THE COURT: Let me ask a question on the law.

10:35:14 20 *Veasey v. Abbott*, I have read it, all of  
21 it. Very fractured opinion from the en banc Fifth Circuit.  
22 Which, to your view, from what can be gleaned from the  
23 standards that are being stated in *Veasey v. Abbott*, which  
24 of Plaintiffs' claims does it control?

10:35:43 25 I don't understand it to reach everything

1 that's being pleaded here, but which of their claims am I  
2 going to then be looking at Veasey and saying, Okay, to the  
3 extent I discern what the majority view is in Veasey as to  
4 these issues, it pertains to claims what?

10:36:02

5 MR. SEAQUIST: Your Honor, I think, although  
6 there was not a Twenty-sixth Amendment claim specifically  
7 asserted in Veasey, to my recollection, I think the opinion  
8 there controls all of the claims, and I'll tell you why.

10:36:18

9 First, it very directly controls the  
10 voting rights claim. The Section 2 vote abridgement claim  
11 here, which is the claim the Plaintiffs are asserting under  
12 the Voting Rights Act, Veasey is essentially the framework  
13 in the Fifth Circuit for evaluating those claims.

10:36:33

14 We have cited some authorities from the  
15 Fourth and Sixth Circuits that we think are instructive and  
16 persuasive, but Veasey is the standard as it is announced  
17 in the Fifth Circuit.

10:36:45

18 THE COURT: Right. And the Fifth Circuit is  
19 obviously looking at and pulling in a lot of other  
20 decisions, but I am going to -- I am going to be looking at  
21 the Fifth Circuit's most predominantly here.

22 Okay. So the first cause of action,  
23 second cause of action, Fourteenth and Fifteenth  
24 Amendments, intentional racial discrimination.

10:37:00

25 MR. SEAQUIST: Yes, Your Honor. And so, you

1 know, obviously Veasey dealt with the voter ID law. So  
2 there, there was both a Section 2 claim and an intentional  
3 discrimination claim, and so a lot of what that Veasey  
4 opinion focused its determination on was reviewing the  
5 district court's determination on intentional  
6 discrimination, including using the *Arlington Heights*  
7 factors.

8 So I think it is helpful in that context  
9 as well, although it didn't specifically deal with the  
10 Twenty-sixth Amendment. The Fifth Circuit has never really  
11 dealt with how an intentional discrimination claim under  
12 the Twenty-sixth Amendment is supposed to be analyzed.  
13 Some courts in other circuits have used the *Arlington*  
14 *Heights* factors, so we went ahead and did that just because  
15 at the time there wasn't a lot of contrary authority.

16 There was actually an opinion issued just  
17 yesterday by the Fifth Circuit. I will confess to the  
18 Court that I have skimmed it but not had a chance to fully  
19 digest it, but there is some indication there or some  
20 discussion there about how the Fifth Circuit views the  
21 effect of the Twenty-sixth Amendment, and this was in the  
22 mail-voting case, Your Honor.

23 THE COURT: Right. And what was the -- I am  
24 aware -- I actually don't have the caption, but I am aware.  
25 I saw press on that decision coming down.



1 MR. SEAQUIST: It is *Texas Democratic Party v.*  
2 *Abbott*.

3 THE COURT: Okay.

4 MR. SEAQUIST: And it is Number 20-50407.

10:38:38 5 THE COURT: 20-50 --

6 MR. SEAQUIST: -- 407.

7 THE COURT: -- 407. Okay. All right. So  
8 that's the third cause of action.

9 The fourth cause of action, actually, is  
10:38:55 10 stating claims as to Fourteenth, Fifteenth and Twenty-sixth  
11 Amendments together.

12 MR. SEAQUIST: Your Honor, from our view, there  
13 is not really any authority for that type of analysis. You  
14 know, an action either violates the Fourteenth and  
10:39:11 15 Fifteenth Amendment, or it doesn't; and it either violates  
16 the Twenty-sixth Amendment, or it doesn't. I have not seen  
17 any authority for combining those to create sort of a  
18 blended class in that respect.

19 The Plaintiffs, it seems to me, primarily  
10:39:26 20 cite the *Symm* case, the *Texas v. Symm* case, which I think  
21 is interesting because the -- the opinion I just talked to  
22 you about, the *Texas Democratic Party*, does describe that  
23 and says the Courts generally read more into that opinion  
24 than is there.

10:39:43 25 But I think, Your Honor, that really, that

1 the appropriate claims, or the viable claims that are  
2 potentially asserted here are the Fourteenth and Fifteenth  
3 Amendment claims, potential discrimination on the basis of  
4 race, or potentially, if there is an abridgement, the age  
10:40:01 5 claim. I don't believe there is any court authority in the  
6 Fifth Circuit for creating a blended cause of action under  
7 multiple prongs.

8 THE COURT: Okay. And then under Veasey, one  
9 thing that's clear is that the judges there are each taking  
10:40:20 10 a very different -- some of them are taking a different  
11 view of the facts in evidence that was there, but my point  
12 is that all of that followed a bench trial and a review on  
13 appeal there that was leading to contentious issues.

14 And that doesn't necessarily -- it is not  
10:40:44 15 a comment by me on the quality of Plaintiffs' claims one  
16 way or the other; but when I look at Veasey, I look at the  
17 Fifth Circuit on a lot of the language is on remand about  
18 sending it back to Judge Ramos to do a further assessment  
19 and a reweighing of -- a reweighing of the actual evidence  
10:41:06 20 there. Something that's very different than what I am able  
21 to do on summary judgment.

22 Can you give me your argument or  
23 observations on that comment?

24 MR. SEAQUIST: I can, Your Honor, and I will  
10:41:18 25 take it in two parts: One, I'll address that as it relates

1 to the Section 2 Claim; and then, two, I'll address it as  
2 it relates specifically to the intentional discrimination  
3 claim.

4                   On the Section 2 claim, I think the  
10:41:34 5 important part there and that what the Court noted was in  
6 that case there was very clear evidence of a burden that  
7 constituted an abridgement of the right to vote.

8                   The Court even said, you know, we  
9 understand that other courts like the Seventh Circuit in  
10:41:46 10 *Walker* have said, you don't have to reach the Senate  
11 factors in making this determination. But in our case  
12 there is such clear -- in those cases there wasn't evidence  
13 of -- of a burden, and in our case there is very clear  
14 evidence of a burden.

10:42:02 15                   What our argument is on summary judgment  
16 is that this case is unlike *Veasey*, where you had a  
17 specific impediment to being able to go and cast a ballot,  
18 which was you had to have an I.D. or you did not get to  
19 vote.

10:42:14 20                   And the evidence was, was that the ability  
21 to obtain an I.D. was significantly harder in certain  
22 portions of the population, in particular, black voters and  
23 other minority voters were faced with specific barriers to  
24 being able to obtain that I.D.

10:42:31 25                   So the Court said in the context of all of

1 that, we are going to go forward to the Senate factors.  
2 Here, that is not the case, Your Honor. There was no  
3 barrier or impediment to any student, any of the  
4 Plaintiffs, any student at Prairie View, or other voters in  
5 Prairie View from walking into the early voting locations  
6 that were established by the county and casting their early  
7 ballot.

8                   The Plaintiffs don't even argue that there  
9 is one. Their argument is ultimately that, well, there  
10 just should have been more hours. But no court has held  
11 that a mere disparity in hours amounts to a burden.

12                   So, on the front end, Your Honor, I think  
13 our case is different from that and, frankly, lends itself  
14 readily to a summary judgment, and allows the Court to not  
15 have to wade into the morass of the factual issues that  
16 might be attendant in the Senate factors, based on the fact  
17 that there is just not the threshold showing of a burden in  
18 this case.

19                   THE COURT: Well, I -- that's interesting. On,  
20 you know, avoiding weighing in -- wading into those  
21 factors, you know, as a federal court sitting over this and  
22 thinking about it, cutting off, you know, reaching the  
23 consideration of this, put aside, you know, which way the  
24 Court might come down on them, but cutting off  
25 consideration of those factors, I mean, I don't see the

1 Fifth Circuit doing that here in Veasey. But it seems --  
2 it's difficult for me, if you're not also then proceeding  
3 to say, And here's why there is no problem under each of  
4 these factors, even if you get to them.

10:44:20

5 And I think that the Plaintiffs have, you  
6 know, things that they want to argue if the Court proceeds  
7 on to those, and that perhaps it might shape how the Court  
8 is looking at the initial step that you do want me to look  
9 at.

10:44:37

10 So I would ask for your response on that.  
11 I'm just trying to look at it from the standpoint, one  
12 thing I feel certain of is no matter what I do here, the  
13 Fifth Circuit's going to be taking a look at my work, and I  
14 want to be sure that they have the record that they need  
15 when they're looking at these and when you all are arguing  
16 before them.

10:44:58

17 And so I am concerned about cutting off  
18 anything on the fullness of analysis, when always on these  
19 elections, you know, there is always the next deadline of  
20 the election and it is better to try to get these things  
21 resolved as completely and expeditiously as possible. Go  
22 ahead.

10:45:12

23 MR. SEAQUIST: Sure, Your Honor. And it is not  
24 that the Defendants are asking you to cut off analysis  
25 or -- or ignore factors that are applicable. What we are

10:45:27

1 saying is, is that those factors don't come into play here.  
2 And the reason is, if you look at what Veasey said, the  
3 second prong of the Veasey test, which includes the Senate  
4 factors, is a causation problem.

10:45:44

5 It determines whether the burden that is  
6 established under the first cause of action, or excuse me,  
7 under the first prong, is actually caused by historical  
8 factors of discrimination such that the ultimate result is  
9 discrimination on account of race, because Section 2 only

10:46:02

10 gets to discrimination on account of race or other  
11 protected category.

12 So what the Senate factors are is a  
13 causation question. So if I can analogous this, for  
14 example, to a tort case, if there is no breach of duty in a  
15 Defendant's action, there would be no reason to analyze  
16 whether those actions are, in fact, a cause of whatever the  
17 Plaintiffs' claimed harm is.

10:46:17

18 THE COURT: I understand that. It would be one  
19 thing if the argument was the Court -- you're going on, and  
20 it is just an advisory opinion, and it is not something  
21 that you need to do. But even in the circumstance that you  
22 have just put out, I mean, the factors are the factors, and  
23 it's set out in terms of different -- you know, there is an  
24 order that is set out for them. But the Court's entitled  
25 to -- to take them all up and take a look at them.

10:46:31

10:46:47

1 And, I mean, I -- and I do -- like -- and  
2 I'll want to hear Plaintiffs' response on this, but when I  
3 look at these, I know there is a dispute about what the  
4 *Gingles* factors do or do not apply to, and it does look to  
10:47:06 5 me like Veasey says that those do apply, and it says that  
6 it should be used to examine causality under the second  
7 part of a two-part analysis.

8 I mean, I see that and I see where it's  
9 stating that those eight or nine factors go towards that,  
10:47:25 10 but I am not convinced that it means I shouldn't be  
11 addressing those now.

12 And I -- and I don't think that Waller  
13 County is -- would be comfortable conceding, While we fail  
14 all of the *Gingles* factors, but you can still rule for us  
10:47:43 15 and we win on the first part of the analysis. I am right  
16 about that? You are just not raising a fight about that  
17 right now, correct?

18 MR. SEAQUIST: That is right, Your Honor. And,  
19 of course, what Veasey tells us is that Section 2 of the  
10:47:57 20 Voting Rights Act only prohibits burdens on minority votes  
21 that would disproportionately abridge their ability to  
22 participate.

23 So what our position is, if there is not  
24 such a burden, and the evidence in this case, we submit,  
10:48:08 25 suggests there is not, then, the other -- the Senate

1 factors, although we don't concede they are present,  
2 certainly could all be present, but that is not what --  
3 what a Section 2 cause of action addresses. The Section 2  
4 cause of action only addresses a burden that abridges the  
5 right to vote.

10:48:25

6 And so -- and I think, frankly, the  
7 Plaintiffs have tried very hard to focus on those Senate  
8 factors, in particular the history, which while we don't  
9 concede, we don't feel like we need to dispute here, to  
10 sidestep the fact that, in fact, there really is no burden  
11 on this voting population. And if there is not --

10:48:40

12 THE COURT: Can you give me --

13 MR. SEAQUIST: -- at the end of the day -- I  
14 apologize, Judge.

10:48:49

15 THE COURT: That is okay. Can you give me your  
16 definition of abridgement, and give me the case that you  
17 think I should look at for what the definition for that is?

18 MR. SEAQUIST: Absolutely, Your Honor. I think  
19 abridgement, you know, it -- well, I will give you the  
20 definition that -- that Plaintiffs' expert gave us, which  
21 is, is there any impediment to casting a ballot or is any  
22 group having to expend greater resources to cast a ballot  
23 than another?

10:49:06

24 I think that definition is also consistent  
25 with what Veasey says. And then we would also direct the

10:49:21



1 Court to the *Virginia v. Lee* opinion where it talks not as  
2 much about what an abridgement is, but goes into some  
3 greater -- or not only about what an abridgement is, but  
4 goes into some greater detail about what an abridgement is  
10:49:39 5 not, which is, you know, some regulation and/or practice  
6 that results in less convenience is not an abridgement of  
7 the right to vote. If it were, any -- any election  
8 regulation or practice would be undone by Section 2.

9                   The Supreme Court and other circuits have  
10:49:54 10 said that is not what Section 2 does. So we really have to  
11 look and say, Can you articulate -- it doesn't have to be a  
12 denial. The Defendants have never said that you would have  
13 to show that you were outright denied, but can you show  
14 that you faced a more difficult time or had to overcome  
10:50:10 15 some barrier in casting an early ballot that other voters  
16 in the county did not?

17                   And here all the Plaintiffs can say is,  
18 well, they were different dates. Well, that is really an  
19 issue of convenience. There is no evidence to suggest that  
10:50:22 20 any voter was not able to, with no impediment whatsoever,  
21 go into the student center where they spend their day  
22 anyway, where they have their lunch, socialize with their  
23 peers, go between classes, have course activities; stop in,  
24 cast a vote within five to ten minutes and be on their way.

10:50:40 25                   So there is just really nothing that the

1 Plaintiffs can point to in this case to say that, You know  
2 what, there are other voters in Waller County who didn't  
3 have to face the impediments that we had to face.

4 In fact, the opposite is true. Most  
10:50:55 5 voters in Waller County don't have this added benefit of  
6 having early voting brought to their, you now, what's  
7 functionally the equivalent of their workplace. They are  
8 going to have to leave the activities of their normal daily  
9 routine to go seek out a voting location and cast their  
10:51:10 10 ballot that way.

11 THE COURT: Let me -- I have three other  
12 questions, and then I am going to let Plaintiffs' counsel  
13 take it up.

14 I want to hear a little -- just a little  
10:51:21 15 bit more detail on the mootness point that you raised. I  
16 want to hear about the sovereign immunity claim as to the  
17 injunctive relief, and what might be, if we had to bring --  
18 do we have to bring Prairie View A&M in here?

19 One question I have in *Veasey v. Abbott*,  
10:51:43 20 and I don't know what this is referring to because the  
21 Fifth Circuit doesn't link it up to anything, but it is  
22 language of concern that I see early in the opinion. It  
23 says -- and it's going into the legislative intent  
24 question.

10:51:58 25 It says, "For example, in a state with 254

1 counties, we do not find the reprehensible actions of  
2 county officials in one county, Waller County, to make  
3 voting more difficult for minorities to be probative of the  
4 intent of legislators in the Texas legislature which  
10:52:15 5 consists of representatives and senators from across a  
6 geographically vast, highly populous and very diverse  
7 state."

8 What is that comment referring to, and  
9 what time frame is it referring to?

10:52:30 10 MR. SEAQUIST: Your Honor, as best I can read  
11 that comment, I think it is a response specifically to the  
12 district court because the district court relied on some  
13 findings, or evidence from an expert, historical expert,  
14 much like this case, might have even been the same one,  
10:52:52 15 about the events that -- the same events that the  
16 Plaintiffs are talking about here.

17 That language is obviously unfortunate. I  
18 think what is important to note about that is that my  
19 client wasn't a party to that case to address those  
10:53:05 20 concerns at the time, or to offer context or explanation.  
21 And so --

22 THE COURT: And I understand. I definitely  
23 understand and appreciate that, and I don't bring it up as  
24 a source of embarrassment, or that it's something that's,  
10:53:19 25 you know, established for purposes of this case.

1                   It is -- but it is interesting language in  
2 what we're all acknowledging to be, I think, the  
3 controlling opinion on a large aspect of this case.

4                   MR. SEAQUIST: I think that is true. I'm  
10:53:36 5 sorry, Your Honor, I didn't mean to interrupt.

6                   THE COURT: No. That is okay. I was done.

7                   MR. SEAQUIST: Zoom strikes again.

8                   I think -- I think the specific items that  
9 the district court referenced were, one, the *Symm* case,  
10:53:49 10 which the Fifth Circuit has now shed some additional light  
11 on; and two, some allegations that might have drawn an  
12 objection from the DOJ in the early 2000s, and where there  
13 might have been some litigation that was settled by consent  
14 decree but without any particular finding.

10:54:05 15                   So, you know, that is, I believe the  
16 background of that comment. I can't, obviously, speak to  
17 what the Fifth Circuit was addressing specifically, but  
18 that was what was contained in Judge Ramos's opinion out of  
19 the Southern District in Corpus Christi, and I suspect that  
10:54:17 20 is what is being referenced there as well.

21                   THE COURT: So, now, tell me why on your  
22 mootness question, if I agreed with that, does it clear out  
23 all of the claims, one; and two, tell me why it's setting a  
24 standard that somehow constrains Waller County so that  
10:54:39 25 there is not this variation among polling places, which I

1 know is what's of concern to plaintiff, that, you know,  
2 if -- tell me why it really is a one size fits all, and not  
3 just a -- I don't know, setting a floor rather than a  
4 ceiling.

10:54:55 5 I want to make sure on your argument that  
6 there is not the ability, if this is what you're asserting,  
7 there is not the ability for some polling places to be open  
8 different hours. Although, I did hear you say earlier that  
9 it may not apply the same way on the weekends.

10:55:13 10 MR. SEAQUIST: I think that -- that is correct,  
11 Your Honor. It requires every temporary branch polling  
12 location to be open on the same weekdays as the main early  
13 voting branch polling location.

14 So in that respect, it not only ensures,  
10:55:29 15 you know, a standardization, but it also ensures an  
16 extensive number of hours at each of the polling locations.

17 So the question becomes, then, is there  
18 any allegation in this case that that set of hours, you  
19 know, on the one hand it is a mootness there, and it also,  
10:55:46 20 I guess, becomes a ripeness issue, too, which is if the  
21 question is, well, could the county still do something?  
22 Until they have done it, there is not really a live claim  
23 as it relates to that.

24 So from where we stand in this case, which  
10:55:57 25 is the Plaintiffs asking the Court to set a standardized

1 schedule going forward, that statute has done that.

2 THE COURT: Okay.

3 MR. SEAQUIST: Plaintiff has --

4 THE COURT: Then as to -- in terms of -- and

10:56:09 5 this is not for me to say how you-all should resolve it,  
6 but if all of the early voting locations are going to be  
7 the same during the week, it seems to me that the only  
8 consideration is what's going to be happening on the  
9 weekends.

10:56:28 10 That sounds to me like if both sides are  
11 acting in good faith, there is an ability to figure that  
12 very narrow issue out, because now you're just -- you are  
13 only down to a certain number of hours and amount of  
14 resources.

10:56:44 15 Have you all considered it from that  
16 perspective? I mean, maybe y'all disagree about how that  
17 law is supposed to apply.

18 MR. SEAQUIST: Your Honor --

19 THE COURT: But what is --

10:56:52 20 MR. SEAQUIST: I'm sorry.

21 THE COURT: Go ahead. I was going to say what  
22 is your take on that?

23 MR. SEAQUIST: My answer to that is I think  
24 it's resolved itself. I mean, what we have is the evidence

10:57:00 25 of what has taken place since the adoption of the statute

1 where all of the polling locations, one in each  
2 commissioners court precinct, have had the same hours. And  
3 so that's been the course to date. There is no indication  
4 that that is going to change.

10:57:13 5 So, again, on -- based on what has  
6 happened today, there is really no basis to claim that  
7 there is going to be any inequity or difference in the  
8 hours going forward.

9 THE COURT: Then I can't resolve it on -- I  
10:57:27 10 mean, yes, the federal court, you know, I am being asked to  
11 exercise my federal judicial power, and that's not done on  
12 the basis of, Well, it looks like it's going okay, and so,  
13 there is nothing for this Court to do in advance of  
14 November 2020.

10:57:46 15 But it is a whole different thing if the  
16 parties are agreeing and saying, Here's what we're  
17 committing to, and the Court signs off on that, as -- as an  
18 enforcement matter.

19 And I don't know if you all want to work  
10:58:01 20 it out in advance. I'm just saying, it sounds to me like,  
21 given a change in state law on that, there is room for  
22 reasonable minds in good faith to figure out how to reach  
23 something that satisfy both sides. Because if I am hearing  
24 you right, the window of difference has greatly narrowed on  
10:58:26 25 what the dispute would be that's available under the way

1 state law requires it to be run at this point.

2 MR. SEAQUIST: I think that's right. And I  
3 think in practice, it has evaporated altogether.

4 THE COURT: Okay. As to the other question is,  
10:58:41 5 you know, I know that a lot of the request here is to make  
6 sure that there is a polling place that is at the student  
7 center on campus at Prairie View.

8 And, again, I look at it as -- as a  
9 question of what power the Court has to -- if that's the  
10:59:00 10 request that's being -- if that's the request that is being  
11 made in Plaintiffs' papers, you know, it is an indication  
12 that Prairie View A&M very much, you know, is happy to have  
13 that, would welcome that. But that's a different question  
14 than what I am able to order and enforce.

10:59:25 15 Tell me why sovereign immunity is such  
16 that I would not be able to order such relief against a  
17 state entity when we are talking about the Voting Rights  
18 Act and we are talking about making sure that  
19 constitutional obligations are observed.

10:59:44 20 MR. SEAQUIST: Your Honor -- and, of course,  
21 you put your finger on what our concern is, which is if we  
22 were somehow ordered to hold an event on a piece of  
23 property that we do not control, that we could find  
24 ourselves in violation of court order through no fault of  
10:59:58 25 our own, so that's the concern there, setting aside, you



1 know, our position on whether any order is produced.

2 But I think, Your Honor, that the issue is  
3 that the remedial provisions of the Voting Rights Act,  
4 though broad, allow for remedies against Defendants, and  
5 folks who are -- Defendants who -- specifically who have  
6 violated the Voting Rights Act.

7 Since there is no allegation that Texas  
8 A&M has done anything wrong, I don't think that they would  
9 be subject to an order under a Voting Rights claim, and an  
10 action between unrelated parties that control their  
11 disposition or allowance of state property.

12 I have never seen a case that would permit  
13 that, and it seems to me to run fairly directly afoul of  
14 the Eleventh Amendment.

15 THE COURT: Let me say this. It's -- I think  
16 that the mootness and the sovereign immunity question -- I  
17 don't have a view on how I am going to come down on either  
18 of those. But I think that they present in this context  
19 real issues, you know, if this was the class federal  
20 courts, it would present more difficult issues there.

21 And I am not saying that y'all are  
22 constrained on your briefing pages, that y'all were cutting  
23 to the substance of the actual claims as opposed to some of  
24 these procedural things.

25 I think if I got five to ten pages more

1 from each of you with the ability to give me a little bit  
2 more depth on those issues, it would be helpful.

3 And, Ms. Aden, I will take your argument  
4 on both of those points right now, obviously, but why don't  
11:01:45 5 we say that -- is 14 days enough to give me ten additional  
6 pages? We will just do it simultaneously. I don't need  
7 you all responding to each other, but just -- because you  
8 have seen each other's, sort of, positions on this, and so  
9 you know what the other side is essentially arguing.

11:02:06 10 Give me ten more pages as to those, just  
11 those two issues, within 14 days. Is that something that  
12 is doable? Do you need more time?

13 MS. ADEN: That works for Plaintiffs.

14 MR. SEAQUIST: Defendants as well, Your Honor.

11:02:22 15 THE COURT: Okay. Thank you. In the interest  
16 of time, I am going to allow Plaintiffs' counsel to start.

17 Mr. Seaquist, did I cut you off? Is there  
18 anything else that you have a burning need to tell me  
19 before we move over to Plaintiffs' counsel?

11:02:37 20 MR. SEAQUIST: Your Honor, I think the rest of  
21 my argument I can probably address as a brief rebuttal. I  
22 would like an opportunity to respond to Plaintiffs'  
23 argument just as a movant.

24 THE COURT: Okay. I do have -- it is 11:00. I  
11:02:50 25 do have a relatively hard cutoff at noon because I have a

1 teleconference participation that I also need to join onto.  
2 I think we will have sufficient time. If anything has to  
3 give, it is going to give a little bit on that end.

4 Ms. Aden, I think we have cleared out a  
11:03:10 5 lot. I hope you appreciate that I have looked at and  
6 understand the facts here. I have looked at it, so I don't  
7 know that I need the beginning point of your whole  
8 argument.

9 But, obviously, what is critical here is  
11:03:24 10 disputes as to material facts, things that you think -- not  
11 why you win at this point but why I should be hearing more  
12 about it at trial, if you understand what I mean.

13 MS. ADEN: Yes, Your Honor.

14 THE COURT: And so with that, why don't you  
11:03:39 15 proceed.

16 MS. ADEN: Yes, Your Honor.

17 So based upon Defendants' motion and their  
18 presentation today, Defendants do fail to carry their  
19 burden at summary judgment, which is where we are; that  
11:03:51 20 there are disputed material facts, particularly as it  
21 relates to the intent that is animating the decision-making  
22 in Waller County.

23 And this Court has to view the facts in  
24 light most favorable to Plaintiffs, and accept Plaintiffs'  
11:04:06 25 evidence as true at this stage.

11:04:24

1 Among this evidence, which I will delve  
2 into in more detail, it's the position by Defendants  
3 themselves, Defendant Eason and Duhon, that the 2018 early  
4 voting plan was inequitable to Prairie View voters, and to  
5 the Prairie View A&M student voters within it.

11:04:42

6 The data, the data also establishes, which  
7 is in dispute, that Defendants directed this inequitable  
8 treatment at Prairie View, and this is the only area in  
9 Waller County with a substantial young and majority black  
10 student electorate.

11:04:58

11 There is probably no other county, no  
12 other area in Texas, with the demographics that are present  
13 here in Waller County. There is no other area in Texas  
14 with the history that Defendants say they won't contest,  
15 but that is as stark and as important to the backdrop of  
16 the decisionmaking that is at present in Waller County.

11:05:16

17 Defendants have tried everything over the  
18 course of decades to limit the power of this particular  
19 community whose demographics are unique in the county and  
20 they're unique in Texas. These are people who want early  
21 voting. These are people who have demanded early voting.

11:05:29

22 And as I mentioned before, when you look  
23 at the schedule, it simply doesn't make sense if you don't  
24 understand the history, and if you don't look at who is  
25 trying to be limited in their participation.

1 All of this may seem trivial. It may be a  
2 dispute about where voting locations are situated, how many  
3 hours, but this all must be seen in students fought to have  
4 early voting come to their campus. And ever since it's  
11:05:46 5 come to their campus, the county has tried to limit it.

6 In 2016, which has been referenced before,  
7 they tried to go from eight precincts to two.

8 In 2018 when students demanded more early  
9 voting, they said, Oh, we will give you a few days on  
11:06:00 10 campus. We will ignore all your reasons why that doesn't  
11 make sense, and we will give it on the edge of campus, even  
12 though it is only after this litigation was filed that  
13 there is all of a sudden a sidewalk, that there all of a  
14 sudden is these accommodations to allow Prairie View  
11:06:16 15 students to vote on campus.

16 So this is the context that I need Your  
17 Honor to be thinking about when it's reviewing the facts  
18 that are disputed in this case.

19 And so there are -- Defendants focus a lot  
11:06:27 20 on the statutory claims, but as Your Honor has mentioned,  
21 there are Constitutional claims, and those are live; they  
22 are contested; and they provide independent bases for this  
23 Court to deny Defendants' motion.

24 The age discrimination claim under the  
11:06:42 25 Twenty-sixth Amendment, yesterday's case, *Texas v. Abbott*,

1 does not change the reality that case is distinguishable.  
2 There, Plaintiffs were alleging that the challenge practice  
3 places a severe burden on Plaintiffs' right to vote. Here,  
4 as I just mentioned, we're alleging that the county has  
5 intentionally targeted this population of young voters, and  
6 this population of black young voters, and therefore  
7 *Arlington Heights* applies.

8 In any event, we have a claim of race and  
9 age discrimination, which violates both the Constitution,  
10 the Fourteenth, Fifteenth and Twenty-sixth Amendments, and  
11 Section 2's discriminatory purpose prong. That is a wholly  
12 separate claim. That also is subject to the *Arlington*  
13 *Heights* analysis.

14 And, as I mentioned, and the focus of  
15 Defendants' claim is on the discriminatory results claim.  
16 I can see that the en banc 2016 Veasey opinion that does  
17 control, that is only speaking to the discriminatory  
18 purpose analysis. It does not speak to the intentional  
19 discrimination claims that we have raised separately.

20 I am speaking really fast, and I will try  
21 to slow down at this point --

22 THE COURT: No. That's okay.

23 MS. ADEN: -- for this purpose. We did send a  
24 slide over to the Court where we tried to identify very  
25 clearly and starkly the independent claims, and I direct

1 your Court's attention to that as relative obviously in our  
2 amended complaint.

3 THE COURT: I'm sorry. Which slide are you  
4 referring to?

11:08:10 5 MS. ADEN: That should be the second slide  
6 after the opening slide which identifies who we are. The  
7 second slide identifies Plaintiffs' independent claims.

8 THE COURT: Hold on one second.

9 MS. ADEN: Uh-huh.

11:08:29 10 THE COURT: Was this -- I'm sorry. I don't  
11 have it that I am aware of. Is it something that was  
12 provided to the case manager?

13 MS. ADEN: Yes. But it was around 8:00 or 9:00  
14 last night, so I apologize. We tried to get it in by --

11:08:42 15 THE COURT: No, I don't mind that at all.

16 Jenelle, do you have something that came  
17 in that hasn't been forwarded?

18 THE CASE MANAGER: I just e-mailed that to you,  
19 Judge. I will print a hard copy.

11:08:53 20 THE COURT: I see it now. So seven slides.

21 Okay. Good.

22 Continue. I now have the reference you're  
23 talking about.

24 MS. ADEN: Perfect. So we're looking at the  
11:09:03 25 second slide. Yesterday's age discrimination claim, the

1 first under the Twenty-sixth Amendment, in *Texas v. Abbott*,  
2 is distinguishable for all the reasons that I tried to  
3 explain.

11:09:15 4 THE COURT: I'm sorry. Can I interrupt you  
5 just for a second? Does opposing counsel have this, in  
6 fairness?

7 MS. ADEN: Yes.

8 THE COURT: If we were in the courtroom, this  
9 would be up on screen. They have got it. Okay. Go ahead.

11:09:23 10 MS. ADEN: And, Gunnar, you can confirm that.  
11 I did e-mail everyone. I just want to make sure they have  
12 actually received it.

13 MR. SEAQUIST: I do have it. Thank you, Your  
14 Honor, and thank you, Ms. Aden.

11:09:30 15 THE COURT: Thank you.

16 MS. ADEN: So first claim, age discrimination  
17 independent bases under the Twenty-sixth Amendment,  
18 yesterday's decision does not disturb that for all the  
19 reasons that it's distinguishable. Therefore, we think  
11:09:42 20 *Arlington Heights*, the factors that are articulated in  
21 *Arlington Heights*, which are factually intensive, those  
22 govern.

23 The second claim is racial discrimination  
24 claim, for race, not the intersection of race and age.  
11:09:57 25 *Arlington Heights* applies. *Veasey* is not controlling on



1 that issue. The en banc 2016 decision reached affirmative  
2 decision on discriminatory results, but it did not affirm  
3 one way or the other the district court's finding of  
4 Texas's discriminatory intent, so we do not believe that  
5 Veasey controls on that second claim. *Arlington Heights*  
6 does.

7                   On the third claim *Arlington Heights*  
8 applies because we are asking this Court to see the  
9 recognition of this unique character of black student  
10 voters in Waller County.

11                   THE COURT: So that's -- I'm sorry. So on  
12 the -- your third bullet point, that's going to your fourth  
13 cause of action, correct?

14                   MS. ADEN: It should be race and age. I don't  
15 -- I don't want --

16                   THE COURT: And so it's a discrimination  
17 against young minority voters, that's the thrust of the  
18 claim?

19                   MS. ADEN: Young black voters. So not  
20 minorities.

21                   THE COURT: Okay. Young black. Okay. Thank  
22 you.

23                   MS. ADEN: Yes. Yes.

24                   THE COURT: And what case -- it's interesting.

25 I mean, it's interesting to -- you have got your Fifteenth

1 Amendment. I understand that very clearly. And  
2 Twenty-sixth Amendment, I understand that very clearly.  
3 And then it's zeroed down to it's like, well, the  
4 allegation is we're combining the two of those things and  
11:11:19 5 it is going against, you know, the young black voters.

6 Is there a case where that's been raised,  
7 and resolved in that way, alleging that?

8 MS. ADEN: So our two cases in support are in  
9 Doc 77, page 10, or 14 of the ECF pagination. We refer  
11:11:41 10 this Court to the *State v. Texas*, which was narrowly  
11 affirmed by the United States in *Symm v. United States*  
12 where there was claims that these very students in Waller  
13 County were targeted by the county because of their race  
14 and age. That was summarily affirmed.

11:11:58 15 And there is a persuasive district court  
16 decision from the Northern District of Mississippi that has  
17 recognized the intersection of race and age.

18 But this goes to the point I was trying to  
19 make at the top which is this is a very unique, splendid  
11:12:14 20 community in Waller County with this intersection of race  
21 and age and the intersection of this history, which we  
22 think the Constitution recognizes and protects.

23 I would direct the Court to the *Symm's*  
24 affirmation by the Supreme Court for more on that.

11:12:32 25 THE COURT: If this goes to trial, is it a

1 bench trial? Am I correct on that?

2 MS. ADEN: Yes, Your Honor.

3 THE COURT: Okay. If this goes to trial, we

4 are going to take a field trip and go take a look at

11:12:44

5 geographic proximity and things like that so -- because I

6 would be interested to -- one thing I learned in practice

7 is, it's one thing to talk about it. It is another thing

8 to walk around between places and see it.

9 So go ahead.

11:12:58

10 MS. ADEN: Show the community --

11 THE COURT: It is just something on my mind. I

12 haven't visited. Yeah, you're referring to the splendid

13 community, and I unfortunately have not visited exactly

14 where we're talking about, although I have been in a lot of

11:13:12

15 other places in Waller County in my life. Okay. Go ahead.

16 MS. ADEN: And then the last claim on this

17 slide is the discriminatory results claim. This is the one

18 that Defendants have spent a lot of time on, and we do

19 think the en banc court in Veasey controls. That court did

11:13:26

20 look at the burden on voters, but it also looked at the

21 totality of the circumstances.

22 The law provides that not all of the

23 *Gingles* factors may be relevant in cases such as these.

24 *Gingles* is a redistricting case, but it has been applied to

11:13:41

25 cases like this alleging denial and abridgement. And some

1 of the Senate factors are applicable here. Many we have --  
2 believe there is disputed evidence about, or at least  
3 Defendants have not addressed that evidence, and that is  
4 the proper framework for that.

11:13:56 5 But all of -- suffice it to say, in short,  
6 all of that goes to the point that Your Honor was making  
7 which is that it is rare that in cases raising these types  
8 of factually complex cases that they are decided at summary  
9 judgment.

11:14:09 10 After more than a year of discovery,  
11 Plaintiffs have disclosed six expert reports. Defendants  
12 only one. Hopefully, Defendants don't even bother to cite  
13 their expert in their summary judgment papers. We have  
14 taken 11 depositions. We have exchanged hundreds of pages  
11:14:26 15 of fact discovery ripe for further dispute.

16 With respect to our Constitutional claims  
17 under the Fourteenth, Fifteenth, and Twenty-sixth Amendment  
18 claims, I want to impress upon the Court that Plaintiffs  
19 show now and we believe that we can show at trial the point  
11:14:44 20 I'm trying to make, that there is no other city or area in  
21 Waller County that comes close to having the age and racial  
22 demographics that are concentrated in Prairie View.

23 All of the counties, all of the areas that  
24 Defendants cite, whether it be Brookshire, or Hempstead, or  
11:15:01 25 Katy, or Monaville, none of them have this age and racial

1 makeup, which is unique, and, again, has been subject to  
2 the discriminatory treatment decade after decade.

3                   It is also important that the stats be  
4 lifted up. 54 percent of Prairie View, as shown in the  
11:15:21 5 third slide that is before the Court and the Defendants, 54  
6 percent of Prairie View is 18 to 20. No other area in  
7 Waller County has more than eight percent of people 18 to  
8 20. So if you look in Prairie View, young people. You  
9 look elsewhere in the county, older people.

11:15:41 10                   Students in Prairie View, they're populous  
11 enough to be a fourth of the county's total voting age  
12 population. They are a source of voting power. Prairie  
13 View is also the only city, I'll reiterate, where majority  
14 of voters are both students and black. 80 percent of  
11:15:58 15 Prairie View's citizen voting age population is black. 80  
16 percent.

17                   By stark contrast in Waller County, as a  
18 whole, roughly only 30 percent of the voting age population  
19 is black. They are a minority in other -- in every other  
11:16:13 20 area of the county that Defendants point to.

21                   Defendants wholly ignore, but it is  
22 disputed, that they departed from their own guideline in  
23 setting the 2018 early voting. Had they applied their own  
24 guidelines, factors that they said went into their  
11:16:30 25 decisionmaking, they -- it should have supported more early

1 voting in Prairie View, including on the campus of --  
2 including on campus at the Memorial Student Center. And  
3 this is based on data available to them that shows that  
4 they are the highest users of early voting in the county.

11:16:48

5 Dr. Stein, Plaintiffs' expert, found that  
6 81 percent of Prairie View students who voted early in  
7 2018, did so.

11:17:06

8 Prairie View students also live in the  
9 Precinct 309, which Your Honor discussed with Defendants.  
10 Precinct 309 had the most registered voters in all of  
11 Waller County in November 2018. The most registered voters  
12 in all of the county. And, uniquely, Prairie View  
13 students, they lack private transportation, and they have  
14 no access to public transportation in the county.

11:17:24

15 This is important because as Plaintiffs'  
16 expert, Dr. Stein, reports, transportation access is a best  
17 practice in determining the allocation of early voting.

11:17:39

18 You can see from the fourth slide, we  
19 tried to set out what was the original early voting  
20 schedule. Defendants walked you through in this slide what  
21 was added after we filed a lawsuit, after they were  
22 compelled to file -- to add some additional days, one  
23 additional day, and some additional hours.

11:17:58

24 I want to note in response to the -- a  
25 question this Court raised, and a comment that Defendants

1 made, that it doesn't matter whether or not this schedule  
2 was worse than 2016. It is a matter of how black voters,  
3 Prairie View students, were treated in 2018. You don't  
4 have to look -- you have to look backwards to understand  
5 context, but the standard is not was this schedule worse  
6 than the one before? Was it discriminatory in 2018?

7 And I should note that we want to talk  
8 about 2016. It was a tough -- a time in the record where  
9 Waller County tried to strip Prairie View students and  
10 Prairie View voters of having access to eight polling  
11 precincts and they went down to two, and they then had to  
12 fight to get those restored.

13 So if you look backwards, we are not going  
14 to have a lot of good evidence in favor of Waller County.

15 THE COURT: Is that about 2016, is that in the  
16 record that you have submitted?

17 MS. ADEN: That is in the record. That should  
18 have been documented in the reports of Dr. Peniel Joseph as  
19 well as Dr. Henry Flores.

20 THE COURT: Okay.

21 MS. ADEN: So the changes that are -- that were  
22 made after this litigation was filed, they didn't remedy  
23 the harm because, again, the treatment continues, and  
24 because students -- because of their treatment, and this is  
25 what makes them unique, they then overcome the

1 discrimination and they do vote, which is why Veasey orders  
2 district courts, directs them not to look at what were the  
3 actual turnout numbers. It is about looking at what the  
4 decisionmaking, and access, and the burden that went into  
5 it because actual turnout actually overcoming  
6 discrimination is not in question.

7 THE COURT: Let me ask this. Let me ask this  
8 in terms of you had said earlier at the outset, something  
9 along the lines of, you know, you are not expecting the  
10 Court to micromanage what's -- what went on then, what  
11 might be going on in the future.

12 I look at the map of the precincts and it  
13 was Exhibit A to Exhibit 11. It's what I was getting  
14 filled in earlier. And I believe it's 20 precincts, only  
15 eight of which had early voting ever even allocated to  
16 them.

17 And, you know, just looking at the map,  
18 and I know it's -- a lot of it concerns -- obviously, a lot  
19 of its concerns are the demographics and what are the  
20 challenges that face each demographic.

21 But, I look at it, and there are, you  
22 know, large, large distances that, relatively speaking,  
23 portions of the populus have to travel and that also  
24 determine, you know, whether they had closer voting access  
25 in week 1 than in week 2.



1                   Because I see the -- so I just -- I see  
2 geographic dispersion and disparity of where the voting was  
3 allowed, and then also, the hours; and as I am looking at  
4 it, from the record, it looks like, you know, when you're  
11:21:22 5 looking -- drilling down into the demographics dispersed  
6 throughout the community, a lot of things are impacting  
7 black and white equally.

8                   I hear what you're saying that what's  
9 impacting Prairie View A&M differently is that it is also  
11:21:39 10 black and young that's being impacted by the decisions  
11 being made. But when I look at eight precincts with voting  
12 places and 12 that had none at all, and in the weeks where  
13 there were early voting, three of them that were held in  
14 week one, not held in week two, and the -- on the other  
11:22:09 15 hand, in week two at Prairie View A&M, or the community  
16 center, that was held week two but not in week one.

17                   I look at all of that and I sort of see --  
18 I don't know what to make of that because it doesn't look  
19 like something that is really targeting Prairie View A&M,  
11:22:27 20 at least just looking at the pieces of evidence here.

21                   So, tell me why those are not concerns, or  
22 something that I -- I can't take into account that way,  
23 when I am looking at just the hours, and where these places  
24 are on the map.

11:22:41 25                   MS. ADEN: So with respect to the other areas,

1 none of the other areas have the legally protected groups  
2 that we allege are protected by the Constitution, and the  
3 Voting Rights Act, so that is what distinguishes them.

4                   As a factual matter, all of the areas, as  
11:22:57 5 the data shows, have access to private transportation in a  
6 disproportionate manner than those -- than what has been  
7 said repeatedly to the commissioners court is absent for  
8 Prairie View students, and both black people and Prairie  
9 View.

11:23:14 10                   Moreover, the facts also reflect that if  
11 you go back and look at the commissioners courts meetings  
12 from this -- this 2018 session and before, none of those  
13 areas are clamoring for the type of allocation that is  
14 reflected in who actually uses early voting, who registers  
11:23:31 15 to vote, who actually desires voting. That distinguishes  
16 them.

17                   And if you look at the report of  
18 Dr. Stein, and I unfortunately don't have the pin cite, he  
19 makes the claim that black voters in other areas of the  
11:23:44 20 county overall are the ones who suffer from least access to  
21 early voting, though our focus here is on black voters and  
22 Prairie View, and particularly black student voters.

23                   I am not going to defend this schedule  
24 because I don't think it lines up with who -- with who has  
11:24:00 25 asked for early voting and where the use has been, but I --

1 I think that the other communities that Defendants point to  
2 are either not legally protected groups, or they are white,  
3 older voters who carry the majority, and they have  
4 resources that the data reflects are not available to the  
5 students in Prairie View, and to the black community in  
6 Prairie View, and that is what makes it distinguishable.

11:24:19

7 All of --

8 THE COURT: Let me ask --

9 MS. ADEN: -- like Monaville, the precincts

11:24:29

10 they point to, those are majority white, older communities.  
11 Katy, most of Katy is outside of Waller County. Hempstead,  
12 Brookshire, about 30 percent of the population is black.  
13 It is not 80 or 90 like it is in Prairie View. It is  
14 not -- it does not have the population of black registered  
15 voters like in Prairie View.

11:24:45

16 And so if you look at where the high rates  
17 of early voting are, where the concentration of voters are,  
18 where the community has fought for early voting, where the  
19 community has said I can't access these other sites without  
20 being denied voting, or without being forced to expend  
21 resources that I don't have to vote, none of that is  
22 happening in other parts of the community, or at least the  
23 record doesn't reflect that that's happening in other parts  
24 of the community.

11:25:01

25 But it is happening in Prairie View and it

11:25:16

1 has happened in decade after decade, and this  
2 decisionmaking is consistent with the practice of the  
3 county of not meeting the needs of this particular  
4 community that is legally protected.

11:25:35

5 THE COURT: Okay.

11:25:45

6 MS. ADEN: You can take my word for it, Your  
7 Honor, the Defendants admit the discrimination. I mean,  
8 they gloss over, and this is a disputed fact, defendant --  
9 as I mentioned at the top, Defendant Eason admitted during  
10 a commissioners court meeting that there is not, quote,  
11 equal representation, end quote, concerning the allocation  
12 of early voting for Prairie View A&M students.

11:26:02

13 At the same meeting Defendant Duson --  
14 Duhon agreed, declaring, quote, I do not think there is  
15 an -- I do think there is an inequity, end quote. They  
16 admitted that they were doing something that was not fair  
17 to Prairie View and Prairie View A&M students. Then they  
18 considered alternatives, which means they have the  
19 resources, which means it wasn't too late for them to do  
20 it, and then they still decided -- they threw up their  
21 hands and said, I am not going to do anything, or I am  
22 going to make these modest changes after the lawsuit was  
23 filed.

11:26:17

11:26:28

24 But all of that is to say that their  
25 admissions are disputed in terms of what the import of them

1 are, but they're important because there is a recognition  
2 at the time that the decision was made, that there was  
3 inequity happening, and that inequity forms the basis of  
4 many of our claims and is borne out by the data.

11:26:43

5 THE COURT: One of your requests for ultimate  
6 relief is an order providing Defendants, and it says at  
7 least parity, standardized, or otherwise adequate early  
8 voting hours as compared to other Waller County cities.

9 What does that mean? How is it achieved?

11:27:06

10 MS. ADEN: It is achieved by a declaration that  
11 what they did in 2018 was discriminatory because a slap on  
12 the wrist means don't do it again.

13 It also means under HB 1888, which we  
14 think gives the county a lot of discretion to set not  
15 necessarily -- it sets the floor for hours, but it does not  
16 set the ceiling, and it certainly also doesn't set where  
17 those opportunities are provided, and, so there is a lot of  
18 discretion about where early voting should take place. And  
19 there is an opportunity for this Court -- for the

11:27:41

20 commissioners court to actually affirmatively engage the  
21 community, and not rely on these party chairs in this  
22 broken system that they have been relying upon to set their  
23 early voting schedule.

24 There can be affirmative steps to include

11:27:57

25 students in the decisionmaking so that the plan reflects

1 where the needs are, and can be balanced against whatever  
2 resources and interest the county has.

3 THE COURT: On the new state law that we were  
4 talking about, I had seen in the papers the idea about it  
5 sets a floor, not a ceiling, and that if that's so then  
6 there can be great disparity at different places as to what  
7 the hours are going to be. That's leaving a lot of  
8 discretion.

9 But is it the case that whatever the main  
10 polling place is that's set, that's -- that's setting the  
11 hours for the other one? Did I -- what is that state law  
12 actually doing in terms of hours?

13 Because I thought I heard from the  
14 Defendants that it's, you know, wherever the county is  
15 setting the -- is it the main polling facility, and setting  
16 the hours there, that has to be set at the others? Is that  
17 not correct?

18 MS. ADEN: So that is my understanding in terms  
19 of the standardization, and sorry if I confused the issue.  
20 But there is -- if there is going to be equity in terms of  
21 the days and hours, there then is the discretion about  
22 where do you site early voting.

23 And there is still a dispute about where  
24 that makes sense and where the resources allow the county  
25 to provide it, and what we have seen in terms of the

1 capable of repetition, you have abating review standard for  
2 being able to provide relief, is that in 2019 early voting  
3 was denied on campus at Prairie View, and -- and in 2020  
4 during the primary election that the case was the same  
5 there.

6 And so a declaration that what occurred in  
7 2018 was discriminatory, and an order that they both  
8 provide equitable and early voting that is in tandem with  
9 what the needs of the communities are, and that includes  
10 the voices of this community member, go a long way in  
11 remedying the problems that we have seen.

12 And that, frankly, Defendants have  
13 admitted -- admitted that they needed a standardized  
14 system. Now maybe HB '88 gets them closer to that, but it  
15 doesn't resolve that. They admitted that they don't --  
16 yes.

17 THE COURT: And so -- and so is the dispute --  
18 so the hours -- okay. So there's the question about, you  
19 know, where are the early voting sites going to be located.  
20 Great. But as to the -- wherever they are sited, those  
21 hours are basically now set by state law because it has to  
22 accord --

23 MS. ADEN: As I understand --

24 THE COURT: Okay.

25 MS. ADEN: -- assuming -- there is lots of

1 litigation, assuming that that doesn't change, that is my  
2 understanding.

3 THE COURT: Exactly. Okay. So, then, as to  
4 where it's sited, is the dispute then that it's been -- in  
11:30:44 5 the most recent elections been sited at the Waller County  
6 Community Center as opposed to on campus at the student  
7 center?

8 MS. ADEN: That is one of -- that is a deep  
9 concern, in part because of --

11:30:59 10 THE COURT: No. No. My question was  
11 factually. Is that -- I mean, is that where -- it was at  
12 the community center --

13 MS. ADEN: Yes, that is correct.

14 THE COURT: -- as opposed to on campus at the  
11:31:07 15 student center?

16 MS. ADEN: The community center and other  
17 places. That's correct, yes.

18 THE COURT: Okay. This is good. And it plays  
19 into the briefing that I have asked for, then, also.

11:31:18 20 In terms of what I would be able to order,  
21 to say, you know, you want an order providing parity,  
22 standardized, otherwise adequate, early voting hours. What  
23 I am hearing you say you mean by that is you want it on  
24 campus at Prairie View A&M University at the Memorial  
11:31:33 25 Student Center.



1 And that may or may not be what is needed  
2 here, but I also need to know -- and it's part of the  
3 briefing that I have asked for -- I need to know as a  
4 federal court that I am able to order Prairie View A&M to  
11:31:57 5 accommodate that in a way that I can enforce. Not based on  
6 Prairie View.

7 And I believe that Prairie View would --  
8 would want to act in -- you know, with goodwill and host it  
9 agreeably. But that is not the question for me when you're  
11:32:12 10 asking for a compulsive order. I need to know that I can  
11 order it; and if they happen to be recalcitrant, I as a  
12 federal court am able to make sure that they comply.

13 Do you see what my concern is?

14 MS. ADEN: I do, Your Honor. We tried to get  
11:32:27 15 to a little of this and we definitely will oblige the Court  
16 and brief it to provide more.

17 Prairie View is not -- and defendants  
18 haven't satisfied their burden that they are both a  
19 necessary and indispensable party. It's -- as a factual  
11:32:40 20 matter, there are many places where Defendants site early  
21 voting that they have no control over.

22 So this idea that this Court has to have  
23 control over, or as a defendant, the places where early  
24 voting is sited is not true of other early voting sites  
11:32:55 25 where the --

1 THE COURT: Well, and I think that you are  
2 right to a large extent, but when the overall schedule and  
3 sites are being set, it's part of a conversation where, you  
4 know, if -- if some site wanted to be disagreeable, you  
11:33:11 5 know, it is like, okay, well, we will look at other places.  
6 And you're working to find them. And you're trying to work  
7 it out amongst a larger community about where those sites  
8 are going to be.

9 I understand all of that. And that it is  
11:33:25 10 being done voluntarily. But what you're asking for is, you  
11 know, for one particular site. No matter what else  
12 happens, it will happen there, and a federal court is going  
13 to order it and make sure that that happens.

14 And that's a little different, I think,  
11:33:42 15 than working with the community, you know, at large and  
16 trying to figure out where the sites are going to be in the  
17 first instance.

18 MS. ADEN: So let me modify my answer and then  
19 we will obviously put it in writing. But it is -- in  
11:33:55 20 essence is obviously very important to Plaintiffs because  
21 of the center of life which I think Defendants can see  
22 because of their transportation issues, because of going  
23 into the pan -- because of before and after the spacing  
24 issues, and all of the benefits that the student center  
11:34:11 25 provides.

1 But we are -- but a site like that or  
2 something comparable is something that Plaintiffs are open  
3 to. In addition to the fact that they be involved in that  
4 decisionmaking, neither the Court, nor counsel, nor  
11:34:26 5 Plaintiffs wants to be involved in telling the county, or  
6 people in Waller County, what is best for them.

7 But they should be at the table and part  
8 of the voice in terms of making those decisions, and we  
9 think that it is fully within the authority of the Court to  
11:34:40 10 be able to do that, and we are happy to continue to brief  
11 the Court and make that clear.

12 THE COURT: And let me ask about that. Again,  
13 I think it's on the -- on the relief language that you're  
14 asking for, and I -- all of these questions, I understand,  
11:34:52 15 are different than the declaratory judgment that you want,  
16 and what -- you know, what the conclusions may or may not  
17 be as to what happened in the past, you know, the  
18 substantive conclusion on your causes of action.

19 But you asked for an order that the  
11:35:09 20 Defendants allow a representative of Prairie View A&M  
21 students to be involved in the process for setting the  
22 early voting schedule.

23 MS. ADEN: Yes.

24 THE COURT: And I don't -- I only have seen  
11:35:23 25 brief references to it. Who else, if -- what other

1 constituent groups have a representative like this? What  
2 does it mean to be a representative? Is this -- is this  
3 something that's set out in the county code and who  
4 representatives are, or, you know, what is supposed to  
5 exist for that purpose?

11:35:46

6 What I would like to know is, is there --  
7 are there some groups that are being allowed in the door,  
8 and then the door is closed to Prairie View A&M, or is it  
9 just simply something where the students want to -- you  
10 have -- you know, have a seat, be in the room where it  
11 happens? I mean, we will go to Hamilton. But, you know,  
12 to have a seat at the table for that where other groups are  
13 not currently doing that.

11:36:02

14 What's your thought?

11:36:13

15 MS. ADEN: So the record reflects that the --  
16 essentially the schedule is devised by the election  
17 administrator now in her official capacity, Ms. Eason. It  
18 is shared with the two party representatives. They agree  
19 on it and essentially give it to the commissioners court  
20 who does make notice of it public.

11:36:31

21 We don't think that the timing of when  
22 they do it, and we think their failure to affirmatively  
23 engage people in setting that schedule is a flaw. But it  
24 is essentially rubber stamped by the commissioners court  
25 and then put out. And then what is the problem with that

11:36:46

1 is that Defendant Duhon has admitted, and they have heard  
2 testimony that those political party representatives are  
3 not -- do not fully represent Prairie View students or  
4 black voters in Waller County.

11:37:00

5 And so what we are asking for is a process  
6 where they affirmatively identify members, Plaintiffs'  
7 membership organization, or university official, or  
8 university group, and bring them to the table because, once  
9 again, this is a community that's asked to be a part of the

11:37:17

10 conversation, and they are a significant part of the  
11 community, and there has been no affirmative obligation on  
12 the part of the county to involve them. It is a pure  
13 reliance on these political parties as they recognize are  
14 not reflective of the entire community.

11:37:33

15 THE COURT: So as a representative you -- you  
16 know, it's just language -- it is not injunctive language  
17 that you would be proposing to me.

11:37:49

18 But you're asking for a representative of  
19 Prairie View A&M University students. I think of -- you  
20 know, when I think of representative, I think of someone  
21 who has been there like voting and stuff. That is not what  
22 you're asking for, is it? I mean, it's not someone that  
23 would be actually decide -- deciding what has to happen in  
24 the county, or is that what you're asking?

11:38:03

25 MS. ADEN: No. They would be part of the

1 conversation that is happening.

2 THE COURT: Okay.

3 MS. ADEN: All of the decisionmaking. We,  
4 obviously, don't want other members of the community to get

11:38:11

5 the short end of the stick just as much as we don't want

6 Prairie View students to. But there needs to be a

7 conversation, and one that the county actually recognizes

8 they need to change the process so that other people are

9 part of the decisionmaking, because they seem to frankly be

11:38:24

10 fed up with all of the confusion and problems that arise

11 when early voting occurs.

12 Some of the commissioners identified

13 during the commissioner courts meeting said, Ever since I

14 have been on this court, when it comes to election time,

11:38:39

15 this same issue comes up every time.

16 THE COURT: Yeah.

17 MS. ADEN: Same issue every year. Every year

18 people ask for parity for Prairie View A&M students. I

19 don't -- we don't want to be back before this Court or any

11:38:53

20 other asking at election after election for things to be

21 different, and so we think that is incumbent in terms of

22 having representation.

23 We are also happy with our briefing to

24 provide -- I think there are orders where the DOJ, the

11:39:06

25 Department of Justice, and others have been involved where

1 they have this type of relief.

2                   So we don't think -- I may not be  
3 articulating it the best that I need to in this moment, but  
4 I think that there are examples of the type of relief  
5 there.

11:39:18

6                   THE COURT: No. I'm sorry, are you there? Is  
7 anybody there?

8                   MR. SEAQUIST: We're still here, Your Honor.

9                   THE COURT: Okay. I think Ms. -- let's just

11:39:29

10 wait for Ms. Aden. She is frozen.

11                   Ms. Aden, are -- the screen froze for you.  
12 Are you back? Can you hear me?

13                   MS. ADEN: I can hear and see you okay.

14                   THE COURT: Okay. We have got you back now.

11:39:39

15 Okay. It froze there for a second.

16                   In terms of -- and so the  
17 representative -- it's not enough -- it's -- I hear that  
18 there is a part of the process where there was an open  
19 hearing and -- so, you know, people could give views before  
20 the early voting schedule was adopted.

11:40:00

21                   And I take it that you're saying there  
22 needs to be something -- someone that's part of the process  
23 and heard before the -- sort of the public comments time.  
24 Is that right?

11:40:17

25                   MS. ADEN: So the record reflects that a lot of

1 the decisionmaking is happening in late August, early  
2 September where Prairie View students, in particular, are  
3 just coming on campus, and a lot of the decisionmaking is  
4 happening where they are not involved and no one is  
5 affirmatively engaging them.

11:40:30

6 In mid October, after the early voting  
7 period was about to start, I think, or had begun, Prairie  
8 View students were alerted of this schedule and they came  
9 to the commissioners court's meeting, and that is where  
10 there was an opportunity for the commissioners court to  
11 revise its schedule.

11:40:45

12 They heard the issues about transportation  
13 yet once again. They heard the issues about how the  
14 community center wasn't a good alternative because of  
15 student life. They heard that the party chairs didn't come  
16 to them and get their opinion about this early voting  
17 schedule. They heard all of the reasons why the county  
18 should commit to fix it.

11:40:58

19 So what I am asking -- what Plaintiffs  
20 would be asking for is that that process be -- it is  
21 conceded to have been broken by people who testified, and  
22 even members of the commissioners court, so that process  
23 needs to be much more deliberative, much more affirmative,  
24 and include more voices in the community.

11:41:12

25 And I believe that there's testimony from

11:41:28



1 Defendant Eason that that is something that they  
2 affirmatively want to do. But to date, that has not  
3 happened.

11:41:40 4 THE COURT: Let me ask -- and I want to be sure  
5 what is at issue in your case here.

6 It's very clearly about early voting and  
7 early voting access. Was there in 2018 -- and I don't know  
8 if it varies county by county across the state.

11:42:03 9 Was there mail-in voting in 2018 in the  
10 subject election?

11 MS. ADEN: Yes, there was. There are  
12 parameters about who can participate in mail-in voting, and  
13 a lot of it means you're going to be out of the county on  
14 election day. You have a disability. A lot of those would  
11:42:20 15 not qualify for A&M students to use.

16 THE COURT: But really my only question about  
17 it is to the extent that mail-in voting was allowed, is  
18 there a claim or concern that Prairie View A&M students  
19 were treated differently as to that?

11:42:38 20 MS. ADEN: Not directly, but only to the extent  
21 that there is issues with mailing in Waller County that  
22 have been ongoing where part of the reason why early voting  
23 is important to the Prairie View student community beyond  
24 election day voting is because there are issues with  
11:42:58 25 students receiving their mail on campus, and their ability

1 to update their voter registration status, which has lead  
2 to a number of Prairie View students being put on the  
3 inactive voter registration list and being purged from the  
4 voter rolls.

11:43:13

5 And so early voting allows students to be  
6 able to find out if that is an issue in advance. Well,  
7 frankly, they don't have to go to the right precinct on  
8 election day, so if you have more early voting, they don't  
9 have to deal with the issue of having to make sure that

11:43:24

10 they are at the correct precinct on election day. But even  
11 if that is an issue, they can correct for it before  
12 election day.

11:43:35

13 The county, to their credit, has been  
14 forced to make corrections on election day, but it is a  
15 continual issue. It is not a direct claim, to answer your  
16 question -- Your Honor's question directly. It is not a  
17 direct part of our case, but it is indirectly part of the  
18 background for why early voting and early voting on campus  
19 is so important to the Plaintiffs.

11:43:48

20 THE COURT: Okay. And then for election day  
21 itself, I haven't seen it come through in the complaint. I  
22 don't think that I see anything about a grievance, that  
23 you're requesting relief as to what's going on, on election  
24 day itself.

11:44:08

25 Did I overlook anything?

1 MS. ADEN: Correct. That's correct.

2 THE COURT: Okay. And as to election day,  
3 where were the polling places in the Prairie View area, as  
4 to on campus, the community center, city hall? Where was  
11:44:23 5 that made available, if you know?

6 MS. ADEN: In 2018, and in the many years prior  
7 to that, it has been on campus on election day at the  
8 Memorial Student Center, which Plaintiffs love and the  
9 community loves. The issue with that is that the data  
11:44:39 10 reflects that most ballots cast by Prairie View students  
11 are early.

12 This is a community that is so amped up to  
13 vote that they -- actually most of their voting occurs  
14 before election day, but we are not making a claim that  
11:44:50 15 they are denied access on election day.

16 THE COURT: Okay. And so there -- on election  
17 day, there was a voting place at the student center?

18 MS. ADEN: Yes. And I would note defendant  
19 spent a lot of time talking about the number of machines  
11:45:08 20 allocated on election day. There were multiple machines.  
21 And to me that speaks to the fact that they know where the  
22 need is, and they know who is there, and they know where  
23 the desire is, but that is not borne out in the allocation  
24 of early voting at that site.

11:45:21 25 THE COURT: Okay. I had asked defense counsel

1 for a definition in the case as to abridgement.

2 Can you give me your competing thought on  
3 that?

4 MS. ADEN: Yes. So I do think that the Veasey  
11:45:41 5 en banc decision is controlling. It makes clear that  
6 abridgement is not about absolute denial. It is not about  
7 whether turnout levels reflect the people ultimately  
8 depressed in their voting, but it is about burden to vote,  
9 and it is about whether people have to take extra steps to  
11:46:00 10 vote. And it is also about the circumstances that would  
11 force people to take extra steps.

12 Here, it is the history. Here, it is the  
13 transportation discrepancies. Here, it is the  
14 socioeconomic status of students who don't have gas. They  
11:46:17 15 don't have cars. They don't have the ability to access the  
16 off-campus sites.

17 I also want to make clear, and I don't  
18 have it readily available, but there are a number of cases  
19 where the Supreme Court and the Fifth Circuit has  
11:46:29 20 recognized -- *Dallas County Commissioners Court*, I think  
21 it's a Fifth Circuit case -- there is another where even  
22 when counties or jurisdictions have provided polling  
23 places, or they have provided access to voter registration,  
24 if you make people stand in a separate line, or you place a  
11:46:47 25 voting site in a way that you know is accessible, even if

1 you're providing them the right, but if you're providing  
2 them a right in a way that is different, and, again, and  
3 makes them do extra steps, or treats them differently, that  
4 is Constitutionally suspect. That is a -- that is a  
5 well-recognized, long-standing principle by the Fifth  
6 Circuit and the Supreme Court.

7                   So *Veasey* and the *Dallas County*  
8 *Commissioners* case from the Fifth Circuit, and there are  
9 some others that speak to that, that principle.

10                   So we would push back on Defendants'  
11 notion that burden is just about the numbers. Here we have  
12 the numbers. We have Defendants admitting that there is an  
13 impact. Plus we have Dr. Stein's expert report saying that  
14 there is an impact.

15                   But the impact must be seen in the  
16 totality of the circumstances, which is when you look at  
17 the Senate factors, and if you look at the factors that  
18 are -- that bear more heavily on Prairie View students, and  
19 black voters in particular in Prairie View, transportation  
20 access, the history, all of those things come to bear in  
21 terms of their access to voting. They're like no other  
22 community in Waller County.

23                   THE COURT: Here's where I am on this, and it's  
24 not -- it is really not a comment on the strength one way  
25 or the other of either parties' case at this point. I

1 don't know where I would be at the end of the day after I  
2 heard all of the evidence.

3 But I do think that I am going to need to  
4 hear some actual evidence and argument in a competing way  
11:48:29 5 where I am able to judge things like credibility, and also  
6 look at it in -- in the way that a judge does at a bench  
7 trial, rather than on summary judgment.

8 I don't know at this point what the  
9 parameters of the claims are that are going to go forward  
11:48:53 10 for trial, but summary judgment at least in some respect is  
11 going to be denied. So I want -- I want the parties to be  
12 aware of that, so that you can start planning for that.

13 I don't want to let weeks pass by with you  
14 all not knowing what to expect and then suddenly we're  
11:49:14 15 in -- you know, we are into July or August and trying to  
16 think about a trial.

17 I am -- I have already asked for briefing  
18 within 14 days. You will get some sort of written ruling  
19 from me clarifying what it is that remains. I am uncertain  
11:49:34 20 as to that.

21 I am going to require the parties to  
22 mediate because I -- as I said already, I think that  
23 there's a way to perhaps work this out for the 2020  
24 election that might serve as a template for something that  
11:49:57 25 goes forward after that. I could be completely wrong, but

1 with the new state law and what it means, there might be  
2 the ability to reach some consensus there. That may be  
3 unsatisfactory to both of you.

4 As to Plaintiffs' counsel, I would -- I  
11:50:16 5 always suggest that on compromise you be happy to accept  
6 yes as an answer to the extent that you can get it; and if  
7 there are fights that remain for later, then, so be it.

8 But there is an election coming up that I  
9 think is probably of importance to the students, and what  
11:50:40 10 this Court is able to do by then and enforce and have  
11 appeals, it may be very different than what the parties in  
12 a cooperative way could work out.

13 I would suggest that there be mediation by  
14 the end of July. But on that, on all of this, fourteen  
11:50:58 15 days from now, with your ten pages that I have asked for, I  
16 would also like, perhaps separately, and it can be  
17 different views or a joint view on when it is you think  
18 that you can constructively mediate, and when it is that we  
19 would set this case for a pretrial and a bench trial along  
11:51:19 20 with a number of days that would be needed.

21 And I don't know what thought -- I -- I  
22 don't know. I would want to hear how much time each side  
23 thinks that they need.

24 I mean, both of y'all have only asked for  
11:51:35 25 30 minutes to argue today, and I have given you much more

1 than that. So let's be realistic about that and whether  
2 trial would be in August or September, you all bearing in  
3 mind that on a bench trial, there is going to be a lot of  
4 work on -- beforehand, proposed findings of fact and  
11:51:56 5 conclusions of law, and immediately after the fact letting  
6 me know revisions to all of that based on what you think as  
7 the evidence came in.

8 Those are my observations, and I invite  
9 you all to ask me questions now for clarification, so that  
11:52:13 10 I can fashion the appropriate minute order from today.

11 Mr. Seaquist.

12 MR. SEAQUIST: Your Honor, I think that we  
13 understand the instructions from the Court. I don't feel  
14 like I have anything further I need to ask you on that  
11:52:27 15 score.

16 If some rebuttal to what Ms. Aden said  
17 would help in your determination as to what does and  
18 doesn't go forward, I would be happy to offer that.

19 THE COURT: Yeah, please. I don't want to cut  
11:52:41 20 that off. Can you give me five minutes?

21 MR. SEAQUIST: Yes, Your Honor.

22 I think the important thing here that's  
23 getting lost is Ms. Aden said students at Prairie View want  
24 early voting. They have demanded early voting. What she  
11:52:54 25 doesn't recognize, or acknowledge, is that they have also



1 been given the most concentrated access to early voting of  
2 any voting block in the county.

3                   They have been given early voting in  
4 excess of every other smaller area, and they are -- you  
11:53:10 5 know, have access to the full-time areas as well.

6                   There is a discussion about it being rare  
7 that cases like this are litigated. That's because there  
8 have been no cases litigated as to a mere disparity in the  
9 number of early voting hours.

11:53:24 10                   The only cases about early voting that  
11 Plaintiffs have cited where any burden was present at all  
12 are cases involving Native American reservations where  
13 folks have to drive 60 miles round trip, 100 miles round  
14 trip, even to cast a ballot. That wasn't a denial, but it  
11:53:39 15 is the type of abridgement that courts have recognized is,  
16 in fact, a burden.

17                   We simply don't have that type of burden  
18 here. And, in fact, when Ms. Aden gave her definition of a  
19 burden, you know, she talked about a separate line, some  
11:53:53 20 other impediment. But what she didn't do is identify any  
21 specific impediment in this case for Prairie View voters  
22 going and casting an early ballot in the hours allotted by  
23 the county.

24                   There was a lot of discussion about  
11:54:05 25 vehicles, financial resources. But what is getting ignored

1 and lost is that no one needs a vehicle to go vote at the  
2 Student Center or at Memorial Community Center. No one  
3 needs particular financial resources to go vote at the  
4 Memorial Student Center, or at the -- at the Community  
5 Center.

11:54:22

6 I want to talk about, you know, this  
7 discussion of -- and I think the Court raised it and made a  
8 great point in terms of there is a public process for  
9 involvement in this decision. There is a hearing held.

11:54:37

10 The entire community has the same opportunity and  
11 responsibility to go and give their opinion if they have  
12 one on it.

13 What the Plaintiffs are really asking for  
14 in this case is specialized access that nobody else in a  
15 county gets. Obviously, the chair of the Republican and  
16 the Democrat party, because those are the two primary  
17 parties, have some input; but anyone else is also free to  
18 contact the election administrator's office and give that  
19 same input.

11:54:51

20 So the fact or the idea that there is  
21 somehow a block or an inability for anyone in the county,  
22 Prairie View students included, to provide input into the  
23 decision, have their voice heard, the county may not go  
24 with it. I mean, ultimately, a lot of what Ms. Aden has  
25 talked about are political deliberations that the county is

11:55:05

11:55:21

1 tasked with making, and the Court's generally show  
2 deference to that.

3                   The -- the Voting Rights Act and the  
4 Fifteenth, Fourteenth and Twenty-sixth Amendment only serve  
11:55:40 5 to stop discrimination. It doesn't serve to fix broken  
6 political systems. It doesn't serve to change the way a  
7 county deliberative body values one factor over another.  
8 It is only to root out a burden or abridgement caused on  
9 account of discrimination, and that burden or abridgement  
11:55:59 10 is not here.

11                   And the final thing I want to say is:  
12 Your Honor, when Ms. Aden reformed her -- or asked as it  
13 relates to the location, she said, well, another acceptable  
14 location. The Waller County Community Center is literally  
11:56:13 15 the closest location off campus that's not subject to the  
16 control of A&M that the county could have located or have  
17 provided and that is exactly what it did.

18                   And, in fact, that building was provided  
19 to the county specifically for the purpose of holding  
11:56:28 20 community events and bringing the Prairie View A&M student  
21 community together with the folks who live in the city  
22 outside of Prairie View A&M as well.

23                   So that's exactly what this building was  
24 donated to the county for. That is exactly what this  
11:56:42 25 building is being used for. And when we get down to

1 talking about, you know, what is the correct location, I  
2 think it is just important to bear in mind that we are now  
3 arguing over less than half a mile.

4                   There is no authority in any case anywhere  
11:56:55 5 that suggests that .35 miles amounts to any kind of an  
6 actionable burden, or disparate impact as it relates to  
7 either Section 2 of the Voting Rights Act or the  
8 intentional plans that have been asserted. And so --

9                   THE COURT: Thank you. And I do -- I  
11:57:13 10 understand and appreciate that. And I think -- there is  
11 obviously a dispute about what that distance means, and  
12 then also in terms of where the intensity of the view is,  
13 and where persons want to do their voting.

14                   I will be able to make a determination  
11:57:37 15 about that after I hear --

16                   MR. SEAQUIST: Yeah.

17                   THE COURT: -- the competing evidence, but I do  
18 note that argument. And as both of you saw, I mean, I am  
19 looking at the map, and I am looking at the hours, and  
11:57:48 20 those types of things also do matter.

21                   I want to really highly compliment the  
22 strength of the advocacy on this hearing on both sides. It  
23 is really quite excellent. The briefs are good. I look  
24 forward to the further briefing, and I will -- once I  
11:58:07 25 receive that, I'll have an order out as promptly as I can,

1 so that you can see it.

2 Let me know how you proceed on all the  
3 other issues. You know, sometimes, especially on something  
4 like this, I certainly understand if a voluntary compromise  
5 can't be reached, but I do urge the parties to try. Okay?  
6 Thank you very much.

7 MS. ADEN: Thank you, Your Honor.

8 THE COURT: We are adjourned.

9 MR. SEAQUIST: Thank you, Your Honor.

10 MS. ADEN: Thank you, Your Honor.

11 MR. SEAQUIST: Thank you for hearing us  
12 remotely today.

13 THE COURT: Absolutely. It was my pleasure.

14 (Concluded at 11:58 a.m.)

15 COURT REPORTER'S CERTIFICATE

16  
17 I, Kathleen K. Miller, certify that the foregoing is a  
18 correct transcript from the record of proceedings in the  
19 above-entitled matter.

20

21 DATE: June 12, 2020

/s/ Kathleen K Miller

22 Kathleen K Miller, RPR, RMR, CRR

23

24

25

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